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of Ontario**

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**Official Report
of Debates
(Hansard)**

Tuesday 20 February 1996

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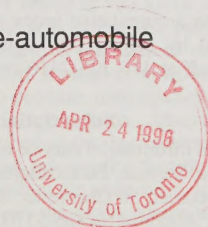
Mardi 20 février 1996

**Standing committee on
finance and economic affairs**

**Comité permanent des finances
et des affaires économiques**

Auto insurance

Assurance-automobile



Chair: Ted Chudleigh
Clerk: Franco Carrozza

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Tuesday 20 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Mardi 20 février 1996

*The committee met at 0922 in room 151.*AUTO INSURANCE
CANADIAN ASSOCIATION
OF REHABILITATION CENTRES

The Chair (Mr Ted Chudleigh): I don't have any business or housekeeping items to bring before the committee, so we can commence with our first presenter, the Canadian Association of Rehabilitation Centres, Mr David Corey, president. Welcome. We have 20 minutes together. If you would like to present a brief, we can then fill in any remaining time with questions.

Mr David Corey: I have had the opportunity to work in the field of rehabilitation for the last 18 years. I founded the first private rehabilitation clinic in Ontario in 1980, and in the past 10 years I've sat on various government committees relating to auto insurance and made recommendations about rehabilitation issues.

Today I come to you as president of the Canadian Association of Rehabilitation Centres, which is a trade organization representing the views of private rehabilitation centres. Our members have as their goal the provision of high-quality rehabilitation services which are designed to restore pre-accident levels of function and return injured persons to active, productive lives. Our members operate over 80 treatment facilities in Ontario and are recognized leaders in the industry. Information about the association is included at the back of the presentation, including a membership list and some standards of reasonable care that we have devised.

Access to effective rehabilitation services is in the public interest. It enables injured persons to return to maximum functioning and resume an active role in their families, the workplace and society as a whole. It ends disability claims which place a drain on insurance companies, workers' compensation and public income programs. It is important to recognize that failure to rehabilitate costs money, using incompetent rehabilitation providers also costs money, but using effective and quality-driven rehabilitation saves money. Timely, goal-directed and appropriate rehabilitation expenses can return anywhere from \$7 to \$30 per dollar invested.

Our submissions to Mr Sampson last fall in anticipation of this draft legislation are included in our written materials for your reference. We're pleased to see that many of the recommendations that we made last fall were considered by the minister in the draft legislation. The bill, in many respects, constitutes a fair and reasonable compromise and is a significant improvement over many of the provisions of Bill 164.

We continue to be opposed to the return to a tort system. A tort system sets up the injured person and the insurers as adversaries and defines success by the amount of money each party can keep at the end of the day. We have seen how difficult it is to promote the functional recovery of an injured person in such a stressful environment. Moreover, lawyers often discourage their clients from participating in meaningful rehabilitation prior to trial in order to augment the size of the future lost-income claim. As we know that most cases take two years to reach trial, and research tells us that rehabilitation outcomes two years post-injury are markedly reduced, a tort system effectively discourages functional recovery.

Given, however, that the government wishes to reintroduce tort, our recommendations will focus on how to give Ontarians and insurers access to meaningful and effective rehabilitation within a tort system.

Under the previous tort system, before OMPP on which I had the opportunity to work, it suited both the plaintiff and the no-fault insurer to settle the no-fault claims early. These claims were primarily the weekly income benefits and the rehabilitation benefits. Once this happened, the injured person would receive no further rehabilitation or case management and his or her condition would drift and often deteriorate. The plaintiff's own lawyer, as pointed out earlier, often promoted this non-recovery. The insured would then testify at trial that he was still disabled by pain and couldn't work, thus driving up the payout for the tort carrier, not to mention the legal fees.

These large damage awards translate into higher premiums for car owners which as you know were climbing all through the 1980s. It is not in the public interest to have injured persons denied access to or refusing to participate in rehabilitation. Incentives must be incorporated into the legislation to promote participation in active and thorough rehabilitation programs. Insurance industry leaders have told us they share this concern.

We propose that the law require that the no-fault and tort claims be dealt with at the same time. In addition, the tort carrier should have the same power as the no-fault carrier to require the claimant to attend a designated assessment centre and participate in rehabilitation.

For the most part, the rehabilitation industry is unregulated. Although the individual health care practitioners are regulated, there are no measures directed at the issue of outcome effectiveness of the programming. In recent years, a burgeoning field has opened in which anyone could open a rehabilitation clinic without regard to quality of service.

We are proposing an outcome-focused accreditation system. Facilities or providers which provide continuing poor service, as measured by outcomes, or which violate conflict-of-interest guidelines, could be removed from the accreditation rolls. Insurers could veto funding to an unaccredited provider. This would increase value for the rehabilitation dollar.

We propose that treatment facilities be accredited by an independent body with a view to improving rehabilitation outcomes in the industry. We feel this is the logical step since the current draft legislation is proposing an assessment centre committee to accredit and monitor assessment centres. Furthermore, we propose that insurers need only pay for the services of an accredited rehabilitation facility.

Third proposal: We're pleased to see that the designated assessment centres will stay in some form, we would like to propose some improvements to this system.

First of all, currently a person must go to a DAC, the designated assessment centre, in his or her geographic area. However, insurers have been known to use a number of tactics to select a DAC they expect will be more favourable to their position. This undermines the principles of objectivity and independence that the DAC system was intended to foster. We propose that DACs be assigned on the basis of a rotating roster. The adjuster would call a 1-800 number, for example, and be given the next available DAC for his client's geographic location. This type of system would ensure that the DAC would be randomly assigned, which was the intention of the Legislature.

Secondly, the proposed assessment centre committee should be required to enforce the time limits set out in the regulations, and the DAC centres which fail to meet these limits should be removed from the roster. The only thing worse than rehabilitation denied is rehabilitation delayed.

Thirdly, it is important that the assessment centre committee ensure independent accreditation of the designated assessment centres, as well as the individual health practitioners who are working within these centres. This is a problem with the current system.

0930

Fourth proposal: We are also pleased that once again section 16.2 of the regulations describes the purpose and goal of rehabilitation benefits. They describe it as "reasonable and necessary measures undertaken by the insured person to reduce or eliminate the effects of any disability resulting from the impairment or to facilitate the insured person's reintegration into his family, the rest of society and the labour market."

This is an excellent description of the purpose of rehabilitation.

We propose that this definition also clearly apply to the delivery of medical benefits that are described under section 15. Right now, it's under section 16. We propose that it be clear it applies to both sections.

Fifth proposal: Part 7 of the regulations, which is entitled "Responsibility to Obtain Treatment, Participate in Rehabilitation and Seek Employment," describes the insured person's duty to participate in reasonable treatment and rehabilitation. This section clearly sets out the duty

on the insured to seek out appropriate treatment and rehabilitation as part of his duty to mitigate losses.

Currently, the regulations permit the insurer to reduce the amount of the weekly benefit by 50% for failure to comply with the recommended rehabilitation. We feel that this is inappropriate and this section should be strengthened to permit the insurer to reduce the amount of the weekly benefit by 100% in cases of non-cooperation.

Therefore, we propose that the insurer be entitled to reduce the amount of the weekly benefit by 100% if the insured refuses to cooperate with a treatment plan recommended by a designated assessment centre.

Sixth proposal: The provision of case management is, in general, an unregulated service and we are of the view that greater controls are needed in order to achieve maximum rehabilitation, as well as cost-effective services.

Therefore, we propose that the regulations be amended to provide that the insurer need only fund case management practitioners accredited by an organization approved by the Ontario Insurance Commission.

There are also elaborate procedures set out in the regulations to determine what constitutes reasonable and necessary medical, rehabilitation or attendant care benefits in the event of a dispute. However, it is not clear how these apply to case managers. We propose that these same requirements apply to disputes involving case managers. Designated assessment centres should also be charged with the responsibility of resolving disputes concerning the need for the services of a case manager and a treatment plan should specify whether or not a case manager is required, since they're not required in all cases.

In conclusion, we hope these recommendations will be incorporated into the draft legislation and regulations. If so, this new system will more closely meet the needs of injured persons and insurers. With these changes, we feel that treatment and rehabilitation facilities will be able to play their full role in returning injured persons to functioning and, in so doing, can help reduce premiums costs by reducing the size of injury awards.

As you know, we have been through three different systems governing motor vehicle accident insurance in the last five years. This will be our fourth system and we hope it can provide a stable and predictable framework for dealing with the rehabilitation of those injured in motor vehicle accidents.

Mr Bruce Crozier (Essex South): Thank you, Mr Corey. You've given a number of suggestions and we won't have time to go over each of them, but on your proposal number 3 where you propose that the designated assessment centres "be assigned on the basis of a rotating roster," the reason or one of the reasons you give for that is that "insurers have been known to use a number of tactics to select a DAC that they expect will be more favourable to their position." Could you enlighten the committee on what makes you make that statement?

Mr Corey: Insurance adjusters tell us they have certain DACs that they feel they trust their opinions more highly than others, and since the DAC provisions spell out that if the DAC has assessed the person previously as an IE, an insurer examination, they're in conflict of interest to then do a DAC, so what they do is they

deliberately pick that DAC or that centre for their IE, which then cuts them out of the loop for the DAC assessment.

Mr Crozier: Well, isn't that interesting. I see where you've pointed out that at least they intend to keep them in the same geographic location.

Mr Corey: Of course.

Mr Crozier: You wouldn't want clients having to travel too much.

The proposal you've made too that treatment facilities be accredited by an independent body, there's also a school of thought that self-regulatory bodies work well, and in your work with your association, obviously, you haven't recommended that it be self-regulatory. Can you give us the reasons why you would suggest that it be independent as opposed to that?

Mr Corey: Self-regulation generally amounts to a peer review system. In our experience, a peer review system tends to be weak, does not have the teeth that are needed to sometimes change best practice procedures. We would prefer to see an independent body which doesn't have the vested interests of a self-regulatory organization, which would use best scientific and practice guidelines and be in a position to enforce them. The problem with the peer review is often there's a hesitancy to enforce some of the provisions. So, we feel it's a stronger and more credible mechanism to have an independent body conduct it.

In the United States, for example, there's an organization called CARF, Commission on Accreditation of Rehabilitation Facilities. They've fulfilled this role for over 50 years. In Ontario we have the Institute for Work and Health which is working on an accreditation system. A number of these independent bodies could be set up to provide it. I feel that what is important is that the insurers need only pay for facilities which have an established outcome record and can demonstrate that and are independently accredited.

Ms Frances Lankin (Beaches-Woodbine): As you pointed out, there have been three different systems over the last five years, and so from a partisan point of view, none of us has got it right.

We had a system back in the previous Tory years with a lot of the right to sue, and pre-1989 we saw rates escalating dramatically and huge costs involved in that tort system. Then we had the OMPP and we saw a stabilization of rates and controls put on but benefits were very, very low and a lot of people suffered through that. Then we saw the NDP increase the benefits and it limited issues around the right to sue, and rates started going up again, and now we see a plan come in that slashes rates, reintroduces tort and yet the rates aren't going to stabilize. According to the industry, they're still going to go up. So it's really difficult to get at the issues here and to try and understand from a government perspective what controls and mechanisms are really going to be effective.

What we're being told by the industry now is that the pressure on rates is primarily fuelled by the cost of medical rehab, and everybody's sort of skirting around what are the reasons. I think there might be a number of reasons. Some people talk about fraud, some people talk about there isn't a single gatekeeper and the idea of the treatment plans and all of that and the DACs start to get

at that, but perhaps more work has to be done there. Others talk about that you'd better acknowledge that in the past the medical rehab system wasn't as well built up, it wasn't providing the services. A lot of people weren't getting the rehab and/or their needs were being met through the taxpayer health system. So there was a cost but it wasn't in the insurance system, it was someplace else.

I suspect it might be a little bit of all of that, but it is to me one of the nuts that we've got to crack as we go through the hearings on the draft legislation, because I think all of us need to understand what more has to be done in that area to get at the problems. I wonder if you could just take some time and talk to us about what is happening in the area and what is driving the costs and do you see possible solutions beyond your recommendations.

Mr Corey: I think you've touched on a number of the possible reasons why the costs are escalating at such a rapid rate. Fraud is to some extent a problem. Conflict of interest plays a big role. The College of Physicians and Surgeons has recently permitted physicians to own their own clinics. Each physician can own a small chunk of it, so now there are large numbers of clinics that are owned by physicians. Physicians are in that case both the gatekeeper and the recipient of the benefit of having that person referred. I know that the College of Physicians and Surgeons is looking at this issue. I think that's one that's driving a lot of costs.

0940

Ms Lankin: It's kind of like those funeral home operators who also run ambulance services. That's always disturbed me a little bit.

Mr Wayne Wettlaufer (Kitchener): One of the things that we're trying to do with this bill—it's not a bill, it's draft legislation. It's a compromise, and even in the discussions that will ensue after the hearings, I'm sure there will be compromises. Of course, the insurance companies can't have it all their way and neither can the claimants have it all their way.

Do you consider what we have done an improvement in the tort system, when we consider that it's designed to improve the access to a fair settlement on the part of the claimant who would not otherwise receive appropriate moneys in a no-fault settlement?

Mr Corey: Compared to Bill 164?

Mr Wettlaufer: Compared to Bill 164 and compared to the previous OMPP.

Mr Corey: I have an inherent bias against tort, because I feel it doesn't fit well with recovery. But let's set that aside for a minute. I think the bill is a reasonable compromise among all of the various needs and demands of the various groups. What I'm proposing is more fine-tuning. For example, the gap between the responsibility of the no-fault carrier and the tort fees or insurance company, I think that's a serious problem. That was a serious problem in the 1980s. I don't see how this draft legislation has really fixed that. So that's an issue that could be fixed.

There's a lot of fine-tuning that could be done here. I'd like to see more controls on the med rehab side. Those costs which now are escalating at very high rates

are out of control and what needs to be done is to make those dollars count. They need to count because they need to return something for the investment, and to do that you have to have outcome-based accreditation, you have to use some kind of functional recovery as your measures. I think it's a fair compromise. It just needs some improvements.

Mr Wettlaufer: I'd like to follow up on that tort bias that you have. I know that tort drives up the cost of claims. There's no doubt about that. However, there are those situations, and they are many, in which individuals, ie, the self-employed individual or the student, ie, a medical student, would have tremendous loss of earning capacity if they did not have some access to the court system. Do you not feel that is a compromise?

Mr Corey: Yes, I believe that is a compromise. However, I have to look at the picture from my seat. My seat is that of a rehabilitationist, and what I saw was a larger percentage of cases where because of the interfering effects of tort—some of it's innocent, some of it's directed by the plaintiff lawyer—the insurer would end up paying higher amounts than they really needed to, because people didn't recover as they should have. Here I'm talking mostly about the multiple—the greatest number of injuries are soft-tissue injuries and chronic pain and psychological problems. Those are the big, big problems. I think everybody comes into agreement with the quadriplegic; what do we do, that's fine. But the real problems are the soft tissue, those areas that I described. There the questions are much greyer than you might think.

The Chair: Thank you, Mr Corey, for presenting to us this morning. We appreciate your input.

STATE FARM INSURANCE

The Chair: We now move to State Farm Insurance, Mr Bob Cooke and Mr Harry Brown. Welcome.

Mr Bob Cooke: Let me begin by saying my name is Bob Cooke. I'm regional vice-president for the State Farm Insurance organization, and their chief agent in Canada. I'm accompanied today—despite the rumours that these are my personal security force—by two interesting gentlemen, an actuary and a lawyer: our legal counsel, Harry Brown, and chief actuary for the Canadian region, Greg Hayward. Greg has 15 years of experience in the Canadian marketplace and is accredited in both Canada and the US, although he'll tell you he spent the majority of that 15 years during the last five years here in Canada.

To tell you a little bit about us, State Farm is a mutual automobile insurance company. We've been providing service to the Ontario consumers since 1938. Currently, we are the largest insurer operating in Ontario and we service approximately 600,000 vehicle policyholders in the province of Ontario. In addition to servicing our policyholders, we really are represented by 350 agents within the province of Ontario and some 1,800 employees who service the needs of our policyholders and our agency groups in Ontario.

I think it's important to know, when you have an employee population of that size, that these folks also exper-

ience their share of personal losses with regard to the auto insurance product, and while we try to put a name on insurance companies at times, we need to understand that these are Canadians servicing Canadians and they go about their jobs understanding the impact that occurs on families as a result of an automobile accident.

The last time we had an opportunity to make a presentation before this committee was three years ago, and these two gentlemen were accompanied by Vice-President Cliff Fraser at the time. At that hearing, we stated our opposition to Bill 164. In fact during those hearings, we stated the following:

We felt 164 would impose a very complex and difficult-to-administer auto product on the consumers of Ontario. We felt that Bill 164 was far too complicated and convoluted in terms of its accident benefits schedule, and it would ultimately lead to overutilization, overcompensation, and potential abuse.

We stated that, in our view, the public would have no choice with regard to the benefits package that they would be covered by, a benefits package, by the way, that in many regards was far too expensive for the benefits they received, because in fact they couldn't actually collect anything, from a personal standpoint, anywhere near what the benefit levels were that were provided under that product. Finally, we stated that in our experience within other jurisdictions, we have found that when we attempt to provide a benefit structure as rich as the 164 program does, ultimately it's proven that the cost to the consumer is just too high for them to continue to be willing to live with. Finally, we believe that Bill 164's unlimited, unrestrained and uncontrolled benefits package will ultimately lead to a spiralling of costs.

We now have 25 months' experience under that program, and I believe most of the predictions we made at that time have proven to be correct.

Within the material that we handed out to you earlier today we provided under tab 1 a series of graphics that kind of demonstrate what's happening within our own insurance portfolio at State Farm relating to costs. The first I'll point your attention to is medical payments, and it's interesting to note that since 1994 we've had roughly a 265% increase in our medical costs and even more disturbing is the fact between 1994 and 1995, a period of time in which we should be starting to see some flattening of costs, we've continue to see a 35% increase in costs. So that you can relate to these charts, this depicts what's happened in an actual 12-month period of time for paid costs incurred by our policyholder group. What's also interesting to note in these numbers is the number of collisions, the actual impacts of automobiles, has remained constantly level at about 5,300 claims during this two-year period of time we're looking at, yet the costs incurred under this program are growing dramatically.

0950

The next one shows you medical report payments. You can see a similar increase, a 300% increase in costs.

You can see rehab payments have gone up probably 700%—200% in the last 12 months.

Caregiver payments have gone up 1,000% since 1993—roughly 50% in the last 12 months.

Attendant care payments have gone up four times in that period of time.

Income replacement benefits have gone up roughly 40%. What is comforting to see here and I think we need to take note of is the fact that the income benefit has levelled off. It really does indicate, maybe where the problems do exist, that we need to be trying to find the balance to correct in the coming months.

Of course, we all know the history of that. We've seen double-digit rate increases in each of the last two years from the industry in general. While that's not been our own specific picture as a company, it's none the less what's happened within the industry.

I'd like to begin by applauding this government for recognizing the circumstances evolving from the current auto product and for taking the initiative to look for corrective solutions and introduce corrective legislation for this process.

As a company, we are supportive of the stated goals of this legislation, which we believe are designed to restore the balance between affordable premiums while at the same time maintaining fair and adequate coverage for the consumer out there who's involved in an auto accident.

State Farm believes that the new legislation takes steps towards achieving those goals, yet we also anticipate, as the product's drafted and as was presented yesterday before this committee, that it will generate a continuing upward trend in insurance costs, and that may ultimately be viewed as unacceptable to the consumer.

I would preface that to say, when you talk about the figures that were displayed before you yesterday by the IBC, the 7% ongoing anticipated increase each year can be roughly divided in half. One half of that is sheet metal costs. The cost of the vehicle itself continues to escalate, so you have to keep that in mind as you look at the impact on coverages.

Ultimately, we are willing to provide the committee with our own actuarial report as to how we view the impact of this new product. We just have not had time, as you'll understand, to completely finish that study at this time.

Having said that, we do believe the foundation exists within this regulation to achieve the desired goals on behalf of the consumer. We're pleased to offer some constructive comment as to what we think should be incorporated in the refinement of this product.

I'd like to begin by talking about the tort area, if I can, very quickly. I think in that regard, we need to reflect back to the mid-1980s—it was done earlier for us by the previous speaker—and recall that it was really a runaway tort train that was fuelling not only double-digit costs, but cost increases in the area of 20% per year. I think we need to learn and take heed of history with regard to what we do with the tort element under this new process.

We recognize the government's desire to maintain an affordable and basic premium by initiating a greater degree of tort into the system to allow the recovery of economic and non-economic loss by the not-at-fault consumer. We do believe that the regulations, as drafted, provide a reasonable benefit level. I anticipate that through the course of the next couple of weeks you will receive pressure to change the threshold limits as well as

the income limits suggested under the tort limits. We believe 85% of net to be a reasonable limit to afford the consumer today, anticipating the costs associated with going to work every day and removing those from the bottom-line impact on a consumer who is really seeking some type of relief as a result of a motor vehicle accident.

In addition, we think to raise that further minimizes the incentive by the insured to potentially return to work as quickly as they can. Also, any increase in the benefit level will obviously have a detrimental impact on the cost of insurance down the road.

We would also urge that the definition of the threshold for non-economic loss be modified to provide a more objective definition as to what we mean by a serious injury. We've provided an overview of what we think that definition could be consisting of within our written submission.

I will say, Ms Lankin, we were watching late yesterday as several members of the public came forth and presented their concerns. We do believe, within the confines of the new legislation as well as the suggested wording we've provided, there may be relief for many of those situations within the confines of the new product.

In terms of accident benefit regulation, we believe there are a number of areas where accident benefits could be refined to preserve the integrity of the government's proposal and maintain adequate benefits for the consumer. I could sum this whole area up by saying we need to place in the hands of the insurance industry at large the ability to manage the costs in the AB area. The insureds pay their premium to us. They expect us to manage the outflow of that premium dollar in the best interests of the consumer who is injured in an automobile accident. To that end, we've provided you a list of 22 submissions on the AB side which we think would allow you to see some refinement in that area.

More specifically, while we acknowledge the need for customer choice in terms of establishing the necessary wage loss benefit for themselves—this is a suggested means of providing a more affordable benefit for the average individual in the province of Ontario—we believe it would be less confusing, more manageable and less expensive if we combined these various options into maybe three or five various packages for offering to the consumer. It's almost unmanageable to think of 256 various options being available to the public out there in terms of auto insurance coverage.

There's also a need to clarify the issues associated with introducing and providing these coverages to the insured and insuring public. We believe a standard method of introduction endorsed by the government must be put in place at the time we transition into this product in order to, number one, safeguard the public and ensure they're properly informed, as well as safeguarding the agent and the broker out there providing the product, as well as the insurance companies as a whole.

While the regulations call for a discussion paper by the Ministry of Health regarding the disclosure of conflict of interest, we believe this regulation should go further in its mandate in that area and should actually require anyone with a conflict of interest to come forward and state that

potential conflict. We think a full disclosure by all parties, including professionals, will reduce conflict problems associated with self-referral, and perhaps the potential for unnecessary medical and rehab services at an inflated cost being incorporated into the system.

We would also encourage the committee, through regulation, to initiate a process whereby a professional fee schedule for all medical rehab and attendant care could be begun to be developed. I would ask, does it make sense today that there is a workers' comp rate for benefits, an OHIP rate for benefits and an insurance rate for benefits, each one getting progressively more expensive?

The proposed legislation does suggest that the Ontario Health Insurance Plan be allowed to assess a levy of some type against the insurance carriers without any clear-cut definition as to how that levy will be promulgated. I would say to you, we do not currently collect premiums for that type of cost. We set our premium levels based on historical payments we've made, and as such, any additional cost that we're incurring on behalf of consumers in Ontario should be designed in a way that we're allowed to pass that cost through the rate-making process without affecting our ability to apply for the rates we need to apply for, especially as that relates to the file-and-use process that you've looked at introducing.

Finally, on the file-and-use element, and what appears to me to be the philosophical regulatory outlook of this government, I think you believe that a free-enterprise marketplace really does set out the best competitive rate for the consumer at large. We applaud your initiative to introduce a file-and-use concept. We would suggest that the regulations, as drafted, seem to impose even a greater degree of regulation on that process than existed before. We would encourage you to simplify what you deem to be a reasonable file-and-use and approval process for companies to operate under and let the free market set rates for consumers in general. I think we'd be pleased with the outcome.

Finally, I think the proposed legislation sets a framework for some tremendous advances here for the consumer and to make the insurance product work better in the province of Ontario. We, as a company, look forward to working with you in the weeks ahead to provide as much counsel and advice as we can in that area. With that, I'll end this presentation. Mr Chairman, we're yours.
1000

The Chair: Thank you very much. You've used up almost the entire 20 minutes. It's been suggested that we have a one-minute round of questions, and I was making light of this committee's ability to get a round in a minute.

Mr Cooke: It was not my intent to use up my time.

Ms Lankin: Particularly when you were starting to see—I could see that look in your eye, Mr Chair.

The Chair: I didn't say that. But I know you have a question. You were mentioned.

Ms Lankin: I have lots. I want to know what I did to provoke that, actually. I can't remember what I said yesterday afternoon that would have done that.

Mrs Margaret Marland (Mississauga South): Now you know Big Brother is watching you.

Ms Lankin: One of the things I've said all along is that I have a lot to learn about insurance and the lingo. Your references, file-and-use, and the fact that the regulations are more complex than the ones they replace, could you just comment and explain that to me. Also, the OHIP subrogation, if it is 2% like it was a number of years ago, are you saying that will probably get passed on or you need to be able to pass that on in rates and that will be another pressure on the rates going up? That wasn't included in the actuarial studies we saw yesterday.

Mr Cooke: Okay, Ms Lankin, I'll try to answer the first part of your question as ask Greg to answer the second part.

In terms of a file-and-use environment, which operates in many provinces in Canada already, essentially what you're permitting the insurance company to do is file for what it believes to be the necessary rate it needs to meet the cost of the consumer today. Rather than have the detailed approval process that exists within the OIC today, they would have the right to either pass that through quickly, take a look at historically how you've filed rates and are you filing in a reasonable fashion and really place their resources into looking at individual requests for a rate that maybe don't seem reasonable at the time, so that we're putting our money to work for us in the best possible way rather than the protracted concept we have today.

Mr Greg Hayward: Very simply, on the health services levy, we are collecting no premium to cover such a levy today. Any cost estimate as to what premiums would need to do would need to take that into account. Basically, for a dollar-for-dollar pass-through, if we're assessed we would need to collect that money in our premiums as well.

Mr Joseph Spina (Brampton North): Thank you, gentlemen, for the presentation. As a 20-year customer of your company—

Mrs Marland: Conflict.

Mr Cooke: I hope you've been satisfied.

Mr Spina: Well, how you handle this I guess will remain to be seen, but I understand that you have the actuarial report pending. I think you indicated that. You indicated that some of the increases that were alluded to yesterday really relate to hard costs; in other words, more expensive repair work on sheet metal, replacing the entire front bumper on a car as opposed to a corner of it as we used to be able to do.

But the thing that I wanted to ask is that in the past, when you were in a profitable situation, because it is a mutual insurance company, you were able to refund some of that profitability in terms of credits to the premiums of your customers.

Mr Cooke: Correct.

Mr Spina: With the growth, I know you may be increasing some of the rates, but if that profitability is reflected, then you have that flexibility to again be able to reduce that premium, do you not?

Mr Cooke: Correct. We have a stated return that we look for. If we exceed that return—and that return really is to fuel growth for the State Farm Insurance organization, to the benefit of our policyholder group, which truly owns us in the years ahead—but where we exceed

that amount we do refund, in the form of a dividend, that excess amount that we've earned in that period of time. In fact, if you look back at our history since 1991, when they introduced Bill 68 we gave an 8% rate reduction. We followed that with a 10% dividend worth about \$32 million that we refunded to our policyholder group. So we do try to operate in the best interests of our policyholder, Joe.

Mr Crozier: Thank you, Mr Cooke. You've acknowledged that the product, as it's drafted now, will generate an upward trend in costs that, I agree with you, will ultimately be unacceptable to the public. In fact, those costs will even be higher and more unacceptable if the health care levy is brought into this.

We have figures that indicate to us that in the years 1990 through 1993 costs decreased noticeably from prior to that and that they were significantly lower than the period from 1984 to 1989. Had the OMPP been reviewed and tightened up where necessary, do you think that it would have resulted in costs that were significantly lower than today if we repealed Bill 164, and would costs have stabilized? What were your projections at that time?

Mr Hayward: I can review that, review the data, but you're right: Shortly after OMPP went in, we implemented an 8.4% rate reduction, along with returning the dividend in unneeded premiums. But we also did have a period there where we had two and a half years without a rate increase following that rate reduction. Since then, we've increased rates twice, both slightly less than 5%. Our rate changes have significantly lagged behind what the rest of the industry has done, but certainly costs have increased much more under this product than they would have under the prior OMPP product.

Mr Cooke: If I could add one comment to that, I think my father once told me, you can never look back, you always have to look ahead. Bill 68 sunsetted two years ago. We're really not in the process of trying to reinvent Bill 68. I think all of these products have been a slow modification of one another. I think we have to take what we have today. I think because of the way Bill 164 was set up, we have to go back to the regs to make some changes, and it's incumbent upon us to throw out that partisanship and start to work on what we're doing here for the consumer's best interests in the long run.

Mr Crozier: My father told me you have to look at experience too.

Mr Cooke: Well, we set rates that way, surely.

The Chair: Thank you very much, Mr Cooke, and thank you to State Farm for your presentation.

FAIR ACTION IN INSURANCE REFORM COMMITTEE

The Chair: We now have the Fair Action in Insurance Reform Committee, Mr Lawrence Mandel. Welcome to the committee, Mr Mandel. We have 20 minutes together. If you would like to make a presentation, we can fill in the rest of the time with questions.

Mr Lawrence Mandel: Mr Chairman, you could do me a great service if after 10 minutes you interrupted me, because I'd like to field all questions, I'd like to leave as much time for questions as possible.

The Chair: Thank you very much. I will do so.

Mr Mandel: I believe there's been a handout that's been given to everybody. I have no intention of taking the time to review that handout, because there isn't enough time to do that and I know that the members of the committee will read that handout.

First of all, as you've said, Mr Chair, my name is Lawrence Mandel. Let's be clear: I'm a lawyer. I represent an organization called FAIR. I'm counsel to that organization. Although that organization consists of various diverse groups, I'm here speaking only, really, for innocent accident victims. I'm not here speaking for lawyers, I'm not here speaking for rehab groups or any groups other than innocent accident victims.

I want to make it clear to this committee that there is such a thing as an innocent accident victim and there is such a thing as a guilty victim. In motor vehicle accidents usually there is someone at fault and someone not at fault, and we have to make a distinction between the two. As much as we want to protect everybody in this society, we can't afford it. So my thesis here is for innocent accident victims.

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As some of you know, I've been dealing with governments on this issue now for six or seven years; first with the Liberal government, then with the NDP government and now with this government.

I remind the Conservative government of its promise, its election promise, and I also remind the Conservative government how, when it was one of the opposition parties, it fought against what the Liberals were doing and what the NDP was doing. I remind this government to live up to its promises and live up to the spirit of its opposition when it wasn't in power, to protect the rights of innocent accident victims.

Now what are those rights and what did the Conservatives promise? The main promise that I want to refer to with the Conservative government, and the one that we certainly expect it to uphold, is the restoration of the right of the innocent accident victim to claim for full economic loss, all economic losses. The other was the right of the innocent accident victim to claim for non-economic losses. Let me address the most important issue first, and that is the issue of pecuniary losses, economic losses. When I say "pecuniary losses," "economic losses" is simply a synonym for pecuniary losses.

The problem with the legislation as presently drafted—and I can only talk about what is presently drafted. If there's going to be something else coming down the road, I can't deal with that. I can only deal with what this government has put out in draft form. The problem is that so far as economic losses are concerned, the innocent accident victim is deprived of many rights when it comes to economic losses.

I should tell you that at least with the Liberal plan, the OMPP, which is now a dead issue, once you passed their onerous threshold, the innocent accident victim could claim for all economic losses without restriction. Now what's happening here? If you look carefully at the draft legislation, I believe it's really section 267—I won't take you through an analysis of it now; there isn't enough time. Section 267 defines the pecuniary losses that can be

claimed for: 85% of net income after one week and then it pigeonholes other economic losses. It doesn't say anything about something called impairment of earning capacity. It doesn't say anything about loss of competitiveness. It doesn't say anything about what happens if you weren't employed at the time of the accident. How do you determine 85% of net? Suppose you're going to be employed some time down the road in the future? It's not there.

Now you may say, "Oh, Mr Mandel, it can be interpreted as being there." Let me tell you what an innocent accident victim can't withstand: An innocent accident victim cannot withstand uncertainty. Why? Because he or she can't afford uncertainty. If an innocent accident victim asks for advice on what their rights are and they can't be told with some certainty what those rights are, they give up because they can't afford the fight. The insurer wins. That can't be so and that can't be what this government has intended.

What this government has done in its draft bill is deprive the right of a widow, deprive the right of a widower, deprive the right of little Johnny or little Susie to claim for the loss of their father or mother, the loss of someone who may be the breadwinner for the family in terms of economic losses. What do I mean by that?

The legislation only says you can claim for non-economic losses in a fatality—non-economic losses. Well, I can tell you what goes on with non-economic losses in the courts. For non-economic loss, probably the highest a person will be awarded—let's say it's a widow who lost her husband, who's the breadwinner, in an accident through no fault of his own. The highest that she'll be awarded, more or less, will be around \$50,000, and from that you have to subtract your deductible of \$7,500. To that you can add your accident benefit; there's an accident benefit in the regulation of \$25,000. So that widow will receive \$67,500 completely and totally for the loss of her breadwinner husband who could be earning \$50,000, who could be earning \$100,000. It doesn't make a difference what he's earning, that's the maximum she gets. Outrageous. You can't have meant that. Surely, you can't have meant that for the widow or the widower, or for little Johnny or little Susie. You can't have meant that.

You can't allow in your legislation innocent accident victims to get thumped, bumped, broiled and bruised, and that's what's happening. This government, the Conservative government, can't allow that to happen. They can't allow it to happen because it's wrong. They fought this when they were one of the opposition parties and they promised in their campaign not to do it. I can't believe they won't live up to their promise. They must live up to their promise. The Conservative government is the last chance for innocent accident victims—the last chance.

We can't afford enriched benefits for everybody—it would be nice if we could—no-fault benefits. It would be nice if we could have bit fat benefits for the entire society, but that's Utopia and we live in the real world and it can't be afforded. So if it can't be afforded, don't make the innocent accident victim pay for it, which is what the legislation is doing. The innocent accident victim shouldn't be paying all the costs.

Automobile insurance legislation first came into this province for the following reason—and it's compulsory. The reason it's compulsory is because the government of the day, in its wisdom, said to the public at large, "We want to make sure that if you're driving a car, the wrongdoer is sufficiently protected by way of insurance so he or she can compensate the innocent." That was the purpose of insurance and that's why it's compulsory. So what's happening now? You're taking away the rights of the innocent. You can't do that. I know there's a premium problem, I know there's an accounting problem in terms of finances, but you can't have the innocent accident victim pay for it.

For those of you who may think, "Well, there really isn't any person guilty in a motor vehicle accident"—wrong. Look at the Ministry of Transportation statistics, your own. The province of Ontario Ministry of Transportation statistics will show you that 80% of car accidents are caused by speed, people who speed—they travel too fast; they advertently make the decision to travel fast and cause accidents—people who follow too closely, people who go through stop signs, and the most serious accidents are caused by people who are influenced by alcohol. There is fault, and the fault cannot be treated the same as the innocent.

As a matter of fact, under the benefits, often the people at fault get more money than the innocent. For example, if somebody is driving a car—and this will happen under your plan—and smacks into little Johnny crossing the street, who's completely innocent—

The Chair: You have arrived at 10 minutes.

Mr Mandel: I'll just finish this and I'll be open for questions. Then as a result of smacking into little Johnny, he drives into a tree and injures himself or herself, he or she will probably get more out of the system than little Johnny. What's little Johnny got? He's got a claim for non-pecuniary general damages—that's called pain and suffering—from which there is a deductible of \$15,000. He has no claim that I can see here for income loss. But the person who injured him may have been employed at the time and has a claim under the statutory benefits for 85% of his or her net income loss. That person gets more out of the system than innocent little Johnny does.

Ethically and morally in North American society we can't allow the wrongdoer to get more out of the system than the innocent. You have to allow the widow and the widower their full economic loss for the loss of their husband or wife, you have to allow for what's called impairment of earning capacity, you have to allow for loss of competitiveness and you have to allow for loss of income in the future. By that I mean income going up—raises, promotions. That's not in this legislation. Someone may say it can be interpreted there. Don't leave it to interpretation. Put it in there. Make it clear.

Thank you, Mr Chairman. I'm open for questions.

Mr Rob Sampson (Mississauga West): Thank you, Mr Mandel. I think one of the difficulties that we've had in this interpretation discussion is that the way in which we attempted to draft the legal access to tort in the legislation was to take it away entirely and then add back the sections of tort that we were proposing that an innocent accident victim would have access to. In that draft-

ing style it's clear to me that we may not have caught the items that you're talking to, in the sense that while it was a policy intent to have the earning capacity, competitive advantage and future income loss in there, it's not specifically noted in the legislation. In fact, I think the legislation refers to a regulation which will define economic loss effectively. As you know, that regulation isn't there.

Maybe there are better ways to fix the drafting style to accommodate what you're after, but I want to make it clear that it wasn't the intent of the government to disadvantage the innocent accident victim from those categories. If there's some other drafting style we should follow to capture that, or it's to the point where we should be specific on the regulations up front, perhaps that's something we should be looking at, but I just want to make sure that you're aware of that.

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Mr Mandel: I appreciate that, Mr Sampson. The only suggestion I could make is this. There are two points I have to make in response to what you're saying.

First, I'm encouraged by what you say but I still have this in response: One, when you dealt with the fatality, the Family Law Act claimant, specifically in your legislation, you refer to certain sections under the Family Law Act under which the dependant—the widow, the child—can sue, and those sections don't include the section for loss of economic loss. That's a terrible mistake because by omitting the section that you can sue for economic loss under the act it looks as if you've done that by design, and I find that very scary on behalf of innocent accident victims.

The second point is this: It's easy drafting and it shouldn't be in the regulation, it should be in the legislation. It's a simple matter. The innocent accident victim should be able to claim for all his or her economic losses less the accident benefits and collateral benefits. End of story. Don't make it complicated, don't try to try pigeonhole it, because by pigeonholing it you're going to cause tremendous problems. By pigeonholing it you're going to have the insurance companies saying, "The legislation meant this by this." Then you're going to have the person acting for the innocent accident claimant saying, "No, no, it meant this." Then you're going to go to court fighting over that specific pigeonhole before you even find out what the right is.

What I'm trying to say to you is that if you have uncertainty in rights the innocent accident victim will lose every time because the innocent accident victim can't afford to take the chance. It's too expensive. So I'm asking and pleading with you for certainty for the rights of innocent accident victims in your legislation.

Mr Monte Kwinter (Wilson Heights): Thank you very much for your presentation. As always it's interesting. I think one of the problems we have to address, and I'd really like to get your comments, is that what is driving this whole exercise is premium rates. Let's face it, that is really what it is. Yesterday, or this morning actually, in the media, after it was announced that the insurance bureau actuaries said that rates are going to go up 7% or 8%, some government spokesperson said: "No, we're going to change that. We have to change that."

Every time you push down here, something comes up here, and we have all of these conflicting interests, and I'm not saying this in a negative way. We have the legal profession saying, "We won't have access to the courts." We have the insurers saying, "We want to make sure that we can have a product that's affordable." We have the police saying—and as you've said, 80% of the accidents are caused by speed and yet we have the conundrum of the government getting rid of photo-radar. So everybody has a conflicting issue, and the number one thing I think everybody in this room is trying to do is to get it right.

How do you reconcile that with the fact that you're calling for increased benefits that are going to have a cost attributed to them which again is going to drive up premiums? We get into this vicious circle. Every government has tried to tackle it and everyone so far, in my opinion, hasn't quite got it right. What is your reaction to that?

Mr Mandel: Sir, first of all, I'm not calling for increased benefits. I'm actually calling for decreased benefits, but I'm calling for increased rights of the innocent. You see, if you have these increased no-fault benefits, it means that the guilty participate the same as the innocent and that's not right. It's against North American values as far as I'm concerned.

Politically, morally, economically, any category, any way you want to justify it—I agree with you, we have to worry about the economics of this and therefore, in that framework, the guilty shouldn't participate in compensation to the same extent as the innocent. What I said before was that the whole purpose of insurance legislation was to protect the innocent, to make sure that the guilty had enough funds to pay the innocent.

So I'm not calling for increased accident benefits. By benefits I'm talking about the no-fault benefits, the statutory accident benefits. I'm calling for decreased statutory accident benefits in order to allow the innocent accident victim the proper rights that they originally had that have been taken away from them, and you don't do that by giving more to the guilty.

As sympathetic as I am to anybody in an accident, be he or she guilty or innocent, the most sympathy has to be with the innocent, and I can tell you, you have to be in my office to see what happens. I'm not here speaking as a lawyer, but it just so happens that I know what I'm talking about because I am a lawyer and I'm not going to apologize for that. But when people come to my office they're very angry when I tell them, "You can't claim for that." "But I wasn't at fault, Mr Mandel. He or she did it to me." I say: "I can't help it. The government took it away from you."

You've got to see the anger out there. There's tremendous anger. Now fortunately most people don't get into accidents so you're not having a revolution out there yet. My point is, there are still a lot of people having accidents and I see them, you don't, and I see what they're going through. There's tremendous anger that they don't have a right to make a claim against people who have caused them this injury through no fault of their own.

I agree with you. We have to watch this thing economically. Look, I don't want insurers being driven to bankruptcy. On the contrary, speaking selfishly, insurers

are my best friends. Let's not kid ourselves. The way to handle this is to reduce benefits sensibly, so that the innocent can be better protected and the scheme is more affordable.

Ms Lankin: A quick question, and perhaps Mr Silipo might want to join in. I should say up front that I have a concern about the tort system. I have a bias probably in opposition to that system so some of what you say I have a hard time relating to, but I think within the tort system some of the arguments you're making are absolutely sound. The concerns you raise around survivor benefits and around definition of pecuniary loss or economic loss I understand, and I think that those points are very valid and need to be taken into consideration in any piece of legislation that is reintroducing tort in a major way.

I was wondering if you could help me, though, because one of the problems I have is when you talk about the rights of the innocent versus the guilty. It's very black and white and I understand what you're saying. Most of the cases that are used to illustrate that are the cases of little Johnny and Susie and they evoke an image that's very clear and very understandable; or of the high school student or medical student and future loss or the potential Nobel prizewinner who is struck and injured by a drunk driver.

Those kinds of scenarios are very, very clear, but I can think of many circumstances where the person who is "guilty" is not the drunk driver; it's not a horrendous act, a malicious act. Sometimes it's closer to just being an accident, and I think about that person in your definition not having equal access to any benefits or coverage under the insurance policy and I think about where that gets picked up and where that person gets taken care of. If that person also is injured it falls back on the state in many other ways and the taxpayer in many other ways. I guess that's one of the things that over the years has drawn me more towards looking at universal disability and those kinds of systems, while recognizing your concerns about cost. But could you address that grey area for me?

Mr Mandel: Sure, I'd be happy to, and I implore you, Ms Lankin, not to be fooled. I'm imploring you not to be fooled. The situations you're talking about are the minority situations. They are by far the minority situations. People are at fault. Don't ever get fooled. People are generally at fault. The police charge them. They get convicted. Their insurance rates go up. Insurers charge them higher rates for being at fault, as they should be charged higher rates for being at fault. The police should charge them. In virtually every fatality there's a charge laid.

Now sometimes you have one of these situations where it's called inevitable accident. The accident would have happened no matter what. Very rare. In 33 years that I've been practising law I've never seen that work but it's there. It's out there and sometimes it does work. But it's so rare that you can't turn the system on its head to accomplish what you're suggesting.

You are a member of the NDP and, as a member of the NDP, I would say to you the last thing the NDP wants is discrimination, and I tell you now that a total no-fault system is the most discriminatory system in the world. You want to know why? Because it treats every-

body the same. And you know what's wrong with that? Everybody isn't the same. Everybody's not the same. If you treat everybody the same, that's the highest form of discrimination. Everybody's not the same, everybody shouldn't be treated the same, and the tort system makes sure they're not treated the same.

My wrist isn't the same as Oscar Peterson's wrist. If you damage Oscar Peterson's wrist, he deserves more compensation than if you damage my wrist. Everybody's different. The disabilities to people are different. You injure a violinist's collarbone, big problem. You injure my collarbone, I'll be in the office tomorrow. You can't treat people the same because they're not the same, and that's why I call on the NDP not to make that mistake. You have to be anti-discriminatory, and no-fault is total discriminatory.

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The tort system tailor-makes to the extent that we can afford it. So don't deprive the innocent. In by far the majority of cases, there is big difference between guilt and innocence—a big difference. To the extent that there isn't, to the extent that the innocent is partly responsible for the accident, that comes off. In other words, if the innocent person is 20% responsible, then he or she will collect 80% of the compensation. The tort system is just and it's merciful, and I implore you not to abandon it, not by way of ideology. Please don't do it by ideology. The innocent accident victim's got too much on the line here.

The Chair: Thank you very much and I apologize, Mr Silipo. We've run out of time. I'd like to thank the Fair Action in Insurance Reform committee for presenting today. Thank you, Mr Mandel.

BOARD OF TRADE OF METROPOLITAN TORONTO

The Chair: We now welcome the Metro Toronto board of trade, Mr Robert Hutchison, chair of the insurance committee, and Gerald McGowan, the vice-chair.

Mr Bob Hutchison: Mr Chairman, thank you. As indicated, my name is Bob Hutchison. I am the current chair of the insurance committee of the board of trade and with me is Mr Gerry McGowan, who is the vice-chair of the board of trade. We're pleased to attend before the hearings. We have distributed a paper which hopefully you have or I guess is being passed out to you now.

I'm not sure I can match the fervour of the previous submissions, but it isn't because we at the board don't feel as strongly about this issue as Mr Mandel does. In a way, though, his comments, his introduction puts in some contrast what the board has to submit. By that I mean not that we are not compassionate to the sympathetic claims of the innocent victims of auto accidents, but in the sense that we take a macro view of the auto issue. This is a very significant issue to business, not only in Metro but in Ontario. The board has participated in discussions on auto insurance since the issue was put in play in 1984 and we have taken it seriously and tried to participate in an appropriate way.

The board is not a stakeholder in the special-interest sense that a number of people on your list here are, but we are a stakeholder in the broader sense, in the sense

that board members are significant consumers of the product you're discussing. Business buys and pays for more auto insurance than probably anybody, one way or another.

The other aspect that's important to us is that the insurance industry itself is a very significant part of business in Metro and in Ontario, and in that sense, rationalizing and ensuring that auto insurance is delivered in an efficient, fair way is very important to the interests of our members and, we submit, the public interest at large in Ontario.

The imposition of an inappropriate system is costly to all Ontarians, in our submission. The costs incurred aren't just theoretical costs. They are real, non-productive costs; we're spending money on things to redress accidents, intentional wrongs, whatever, but we don't produce any wealth or any benefits to society. How we handle that instance is important, not only to us in Ontario but also to how people outside Ontario judge us.

This issue has been kicked around for 10 years, roughly, and as somebody commented earlier, we haven't got it right. We have to get it right now. It's too expensive for us, not just in terms of the costs borne in Ontario but in terms of how people looking to invest in Ontario perceive Ontario being able to handle these kinds of issues.

It's time for the government to make the tough calls. It's not a simple matter. We appreciate that; we appreciate the conflicting interests that have been referred to earlier. The government and members of this committee will have heard and will hear these special interests being put forward. Not to say they aren't without validity; however, to be swayed by one over another and to ignore the common interests of a stable and efficient system I think is wrong. We simply can't afford that any more in Ontario, and we hope we get it right.

With that introduction, we believe, as our submission indicates, that the proposal is generally on the right track and the board supports it. We believe it's an appropriate balance in the circumstances and in the way this issue has developed between protection and the issue of pricing and cost that we're all sensitive to.

That conclusion is based on the principle that costs can be contained in a fair way, and to the extent we have reservations or comments on the proposal, they primarily relate to that aspect. We endorse the principle the government has pointed out, that compensation ought to be the overriding principle rather than an entitlement system, and we believe that's consistent with a healthy long-term auto product.

There's no question, as indicated earlier, that this is a very difficult and complicated subject. For those of us who have had anything to do with it, you can't underestimate that. But with that in mind, we believe the government should provide for enough flexibility in the legislation and in the regulations to accommodate adjustments that inevitably will be required over the next period of time, as the system is worked in. It doesn't mean that the flexibility that's provided for will open the floodgates to change the fundamentals of the system, but there will be tinkering, and we believe the regulations and the legislation could be broadened in that regard.

The other aspect that relates to cost are the inherent abuses invited by the system of auto insurance we're dealing with. There are a number of aspects that we know the government has heard about and has addressed one way or another in the legislation, but there are areas where we think they might reconsider aspects of it.

One is fees, which was referred to one or two submissions ago. We're concerned that the fees and the costs charged for health care services ought to be the subject of some sort of schedule or parameters so they can be contained. OHIP, workers' comp and so on approach the matter that way, and the fear of abuses in that area could be contained within a fair and flexible schedule.

The other area that concerns us is conflict of interest, from a general philosophical and a specific cost perspective. Again, a system like this that's mandated and requires people to retain certain services invites abuses. Section 60 addresses conflicts of interest to a degree, but as has also been pointed out, it does not require disclosure of conflicts of interest and certainly doesn't go as far as to prohibit them.

We're not sure why we couldn't go further down that road and at minimum require disclosure where conflicts arise and possibly consider banning relationships where the conflict does become apparent. There's ample precedent for that in other areas of financial legislation, both provincially and federally, and it's something we don't think would be unfair to consider in this context.

Another area that concerns us is the operation of the exclusions provision in section 33. Exclusions, of course, are those areas where by virtue of the conduct of a driver, whether it's drunkenness, driving without coverage, driving without a licence, that sort of thing, compensation is denied. At the moment, the only exclusions relate to income replacement and non-earner benefits. We're not sure why the range of compensation payments that somebody who's injured would be entitled to shouldn't be restricted altogether.

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We appreciate that this means the cost may go somewhere else, but it seems to us that you're either in the system or outside the system, and if the exclusion is designed to take you out of the auto insurance compensation scheme, those costs ought properly to fall in whatever other safety nets society is going to provide. If that means increased costs on the health side, so be it; at least it's consistent and it makes the exclusions meaningful and introduces the aspect of accountability in the driving system.

We're also concerned about fraudulent claims, certainly an endemic problem in the industry. We were hoping the legislation could go further in that regard and specifically increase penalties and the monitoring of those kinds of abuses.

In conclusion, the board has also submitted in the past that auto insurance can't be regarded as an isolated phenomenon or product. It has to be integrated with the other services and regulations of the province. We're aware that the government is considering this, but it's important that it be synchronized with pending changes in health care entitlements and general workers' compensation, pension entitlements, that sort of thing. Hopefully,

the underlying principle will be accountability throughout the system.

The last area that the board has considered appropriate to deal with in this area is road safety. We've made submissions in the past on that. There's no question that safer roads, driving restrictions, penalties and so on enhance road safety overall and the health of drivers, and we should not lose sight of those initiatives.

Mr Chairman, those are our submissions.

Ms Annamarie Castrilli (Downsview): Thank you very much for coming today. You made some interesting points. I'd like to focus on three very briefly. I'll ask you to comment on all three.

The first is that you indicate the need for stable insurance premiums. You probably have heard or seen the statements by the Insurance Bureau of Canada. Their idea of stability is an increase of 7% to almost 8% a year for the next five years.

The second point I find interesting is that you talk about flexibility within the regulation to address cost anomalies, and I wonder if you could enlarge on that.

The third point was brought up by the previous speaker, dealing with the notion that we might treat people who are at fault differently from people who, through no fault of their own, are in accidents.

Mr Hutchison: I'm not sure they're all related, but let me take a stab at them.

Ms Castrilli: They're not.

Mr Hutchison: We're concerned about the cost implications of this program, as we were concerned with the previously proposed program. Our view of it is that we're in this now; we can't unwind the economic situation we're in with respect to auto insurance. You can't start over again with a clean slate entirely. There is going to be some adjustment in the system.

What we're hoping this legislation will introduce, though, is a degree of accountability and that users will pay for what they get and that the product will match costs. At the moment and for the last number of years, that's been distorted.

As I indicated earlier, the board members probably pay more in auto insurance than anybody, if you identified one single group, so we're certainly not in favour of it. On the other hand, we understand we've got to pay for what we're benefiting from, and hopefully the system we're starting on over time will adjust and take that into account.

Can you remind me—

Ms Castrilli: Oh, I was asking about the flexibility, what you meant by that.

Mr Hutchison: We have been concerned that getting it right the first time is going to be difficult. I'm not going to go into the aspects right now where we think we can build in flexibility. Certainly the ability to make regulations is important, but we want to make sure there's an expectation that those can be dealt with without going through this kind of procedure in the future, which I just don't think we can afford or the province is up to.

Similarly with the legislation, the board does not endorse taking fundamental issues like this outside the purview of the Legislature and putting them into regulation form. On the other hand—

Ms Castrilli: Could you give me an example of the flexibility?

The Chair: Thank you, Ms Castrilli. I'm afraid in the interests of time we have to move on.

Mr Tony Silipo (Dovercourt): I want to pursue this question of what all this is going to do to premiums. I would have thought that part of what the government was attempting to do with this was to be clear that we would see some sorting out of the premiums and the costs to the consumer, I think to take into account very much what you said, that people ought to pay for what they're getting. We have no indication that's going to happen. In fact, as has been pointed out, we expect that premiums will increase.

The insurance system would have us understand that rate increases will be less than what they might be under the present system, and one could argue there's some benefit to that, but there's also the recognition that the benefits people are getting in terms of coverage as a basic package are less than people are entitled to today. There is clearly that tradeoff.

But overall, we're seeing no decrease in rates and we're seeing a product that is going to be less than what people are getting now. From our perspective, we're having some difficulty understanding how the consumer at the end of the day is going to be better off than they are today.

Mr Hutchison: I guess it depends on whether that's the objective. The fact is that what's being provided now can't be afforded. It's as simple as that. It may be that we're going to go through a period of rate adjustments. I'm certainly not a rate expert, but my understanding of the comments of the IBC and the other companies is that there's going to be an adjustment period over five years but that hopefully they'll work to a system where the benefits will be borne by the costs borne by society and that there will be a rational and fair relationship between what we pay and what we get out of the system.

Mr Silipo: So you're hopeful that over time those questions will get sorted out, and you're more optimistic it will get sorted out under this system than under the present one.

Mr Hutchison: Nothing that can be done by the government can change that in the immediate future. It's just that we're in the system, as I indicated; it's going to take an adjustment period to get there.

Mr Tim Hudak (Niagara South): Thank you for your presentation today. I just want to follow up with some quick questions on your recommendations on those outside the insurance system. If I understand correctly, you would like to see that anybody who engages in prescribed activity is taken out altogether for medical rehabilitation expenses etc. Does that, to your knowledge—maybe I'm asking the wrong area here—put any pressures on the rate system? Is that a significant contributor to increases in premium?

Mr Hutchison: I'm not sure I can answer that, but our objection to it is that it's philosophically wrong. You're either in the system or you're outside the system, and the auto product ought not to bear those costs. Otherwise, it's not a meaningful exclusion.

Mr Hudak: And how about the fine levels? We've increased the fine levels for driving without insurance etc to \$1,000, I believe. Is that high enough, in your opinion?

Mr Hutchison: Probably not. I don't think \$1,000 is much of a deterrent to a driver.

Mr Hudak: It's worth taking the risk, in your opinion.

Mr Hutchison: I don't think people think of it that way, but if it's potentially a big hit, they will take it into account.

The Chair: Thank you to the Metro Toronto board of trade for the presentation. We appreciate your input.

1050

ONTARIO CHIROPRACTIC ASSOCIATION

The Chair: We now welcome the Ontario Chiropractic Association, Mr Robert Haig. Welcome to the standing committee on finance and economic affairs, gentlemen. We have 20 minutes together. Would you please identify yourself for Hansard as you make your presentation, and please proceed.

Dr Lloyd Taylor: Mr Chairman and committee members, thank you very much on behalf of the chiropractic association to have the privilege of representing ourselves here today. I'm Dr Lloyd Taylor. I have a private practice in Welland and do Queen's Park for the Ontario chiropractors, and have done for a number of years.

On my extreme right is Dr Bob Haig, who has been involved in insurance with the association and is a past president of the association. He presented before the Osborne commission a number of years ago, has been very current on insurance relations for the profession and does government relations for the Ontario Chiropractic Association.

On my immediate right is Mr David Chapman-Smith, who is the general counsel for the Ontario Chiropractic Association and has been for the past 14 years. I'll turn it over to David Chapman-Smith.

Mr David Chapman-Smith: Good morning. If you've had an opportunity to look at our submission already, it's a little bit forbidding and it's not going to be possible to go right through it. On the other hand, we hope when you do look at it you'll see that it has been kept very brief and to the point, and we have kept it to four major recommendations. There were others that were urged on us by our members. I hope it's helpful.

I want to start today by saying something which we all know but needs to be reinforced, and that's that this legislation of course is all about a balance. Representing a health profession here today, I think it's quite fair for me to say that health professions haven't always done well. They haven't had the best evidence for their treatments; they haven't had the best guidelines; they haven't had the best control over their members; and that's acknowledged. In this law, when there's talk about submitting a treatment plan and evidence-based care and better guidelines, this association supports all of that and understands that's necessary. I want that to be clear from the beginning.

Likewise, on the other side, we have an insurance industry that is really not too concerned about adequate treatment but is concerned about cost. If anyone was ever

in any doubt about that, you only had to look at the OMEGA proposal that came forth, which was grossly unfair to accident victims.

What this legislation tries to do is to create a right balance, to put some checks and controls on health providers and patients but also to make sure that they get adequate care, and it's that balance we're talking about today.

In the executive summary, in paragraph 1, we start by acknowledging and stating that the chiropractic profession now has a leading role in the research and management of patients. I'm not sure how much various of you know about the profession and its rapid growth in the last 20 years, but in this submission, and I won't have time to go through it now, we assert and it's our submission that the leading research in North America into automobile accidents is being done by teams led by chiropractors that have been involved in the recent Quebec task force.

Over the last 10 years, more and more accident victims have come to chiropractors because their management approach is the one that now has the best scientific evidence of effectiveness. Without getting into details, we're talking about an early active treatment with manual therapy, exercise, keeping people moving instead of immobilizing them, putting them in collars, telling them to rest, wait and get disabled.

So the profession now has a very major role in this. It also has the experience, though, of how minor changes in legislative wording that appear subtle from a legislator's point of view can have a very, very big impact on tens of thousands of patients when they get out there and into the war that goes on between providers and insurers and adjusters and case managers and everything else. It's that which we now address in the time that we have.

The first recommendation, which is in paragraph 2 of the executive summary, is that the term "medical" be replaced with the term "health care" throughout the bill and the regulations, except where the former describes services provided by a physician. In appendix A, which I won't look to now, we have gone through and tabulated all the relevant provisions.

The arguments in support of that recommendation begin at the bottom of page 2 of our submission. First of all, the argument is that it's technically wrong as a matter of legislative drafting to use the word "medical" because it's used in two completely different senses in this regulation. Sometimes it refers to physicians' services, sometimes it refers to the services of all providers, sometimes it refers to the services not of physicians but of other providers. That would be adequate argument in itself, we would suggest, but at the top of page 3, we raise the other arguments and said it's inappropriate in various ways.

In paragraph (c), what we're asking for was raised before a committee like this when the Workers' Compensation Act was amended. That submission was accepted then and we attach an extract from the Workers' Compensation Act where "medical benefits" is now "health care benefits."

Finally, in (d), and perhaps most importantly, we allude to the fact that this creates problems for patients. We have two patient example letters here. I'm not going to get into them today because of time, but these are

cases where a person who has had an accident goes to their health practitioner, who, as you know, may be a medical doctor or a chiropractor or may be a physiotherapist or an optometrist or a psychologist, and then gets told by an adjuster, "We're only going to pay for this if you go to your medical doctor." That is something that used to be the law once, isn't now, but as long as you keep talking about "medical benefits," that's the culture. So our first submission is that this should be changed appropriately.

Recommendation 2, towards the bottom of page 3, is our most complex one, but rather important, and I'm going to walk through it now. It has to do with subsection 42(6), and I should just pause to say that we are rather unashamedly talking about health care benefits issues in the limited time we've got because that's where the expertise is, and ignoring the other wider issues that we've already heard about and that are going to be before you.

Subsection 42(6) is the provision that provides for acute care. This is the provision which provides that if patients are going to get injured and go straight to a physiotherapist or a chiropractor, there has to be some guarantee of payment for initial services, rather than their just falling into the system of prior filing of a treatment plan and everything.

In the legislation as drafted, there is an alternative. What it says is that for those services provided by a physiotherapist or a chiropractor, the first 15 treatments will be paid for, or the first six weeks, whichever is less. We're addressing that in this recommendation.

There is the text of the recommendation for (6). First of all, we're adding to the beginning, after "(6)," "despite subsection 1." For a technical reason that I won't get into now that's a drafting thing that has to be looked at, I think the intent of this legislation is that if you get a few treatments before you file the plan, those are covered, and I don't think that's going to be a practical problem. But it could be read to say that you couldn't, and if you put "despite subsection 1" into that, it makes it quite clear that the provision we're talking about, which provides for automatic payment for some initial services, does cover services before the plan is filed. That's very technical and I don't hear myself being very clear on that, but I don't think that's a problem.

The next thing is more important:

"(a) the incurred costs for services rendered during the first eight weeks of treatment by either or both of a physiotherapist or chiropractor."

Let's leave (b) at the top of page 4 for a moment, and I'll come back to it.

Clause 42(6)(a) at the bottom of page 3: We have the explanatory notes on page 4.

If you go to paragraph 3(b), at the moment this regulation talks about treatments, and this is just the simple point that it doesn't include assessment or diagnostic services, including X-rays, and obviously the intent was that those would be covered. So the recommendation is that the word "treatment" be changed to "services." It could be "visits," if that made people feel more comfortable, but it should include diagnostic services as well as treatment, obviously.

Under paragraph 3(c), we refer to another part of this recommendation, which is the deletion of the 15-visit alternative and the substitution of a period of eight weeks for six weeks, those eight weeks to run from the commencement of treatment, not the time of the accident. In the submission, we address those issues in detail and I'll walk you through those now.

First of all, the 15 visits: We ask where it came from, under (c)(i) at the bottom of page 4. There's nothing in the literature or in guidelines that would justify this. On the other hand, there is support in the literature and in the natural history of soft tissue injuries for a period of time. **1100**

As used, 15 visits, it's appreciated, isn't meant to be an estimate of necessary care but rather the initial number of treatments where payment is guaranteed pending processing of a treatment plan. However—and we urge you not to treat this as paranoia but experience in the trenches—patients in the OCA have long experience of some insurers and their adjusters seizing upon and misinterpreting numbers like this and telling patients frankly, whatever their condition, that this is the maximum number of treatments. That's another reason for not using a number-of-visits approach. If you put a number out there, it's amazing how people jump on that if they're trying to save money and say that's what you should be getting.

If it was justified by the literature, we would support it, but we suggest that a period of time is what's supported by the literature, what's practical and provides the coverage that insurers want. We know what their reasonable expectations are, that you shouldn't have treatment for months or years from the same provider going on and on and on, but here we're just talking about initial weeks.

You can imagine there could easily be a case of moderate whiplash where after two or three days, when the initial inflammation has gone down, a patient is going to need quite intensive care over the first three, four, five weeks. If you run through 15 treatments in three weeks, and then you run into the system and people who won't pay and are put into a DAC system, you're getting interruption just where you least need it. We would suggest that for accident victims with those sorts of injuries, a period of eight weeks is appropriate, as opposed to a limited number of treatments.

Turning now to the eight weeks on page 5: In the draft legislation there's provision for six weeks, and that compares with the current law, which is 12 weeks, in the ways specified there. It's suggested by the OCA that the appropriate period having regard to the literature and all of this is eight weeks.

Again, under (iii), the OCA is extremely concerned that insurers will misrepresent six or eight weeks as the full treatment period. Understand that under the Workers' Compensation Act, for example, it's automatically 12 weeks. Under the current law it is, and we think that was based on workers' comp, and we think that's an appropriate period. We understand the desire to cut down. Our submission is that eight is right, but on the basis that this is an interim period for processing of a treatment plan, rather than the care that's necessary.

We also reference, under the second bullet, another submission that we're coming to next, that we really

think there has to be some clearer guidance about who is operating designated assessment centres so that when treatment plans are judged, there is genuine peer review and things don't go awry then.

The final point under this recommendation, with the last bold subheading on page 5, is, "Time to run from commencement of treatment, and provision for treatment by chiropractor and physiotherapist." This really is a matter of understanding what are the reasonable rights and expectations of someone injured.

We say it's manifestly wrong from the patient's perspective to link the eight weeks to the time of accident. A patient may initially receive no care or medical care, and only receive chiropractic or physiotherapy treatment four, six or eight weeks after the accident.

It's quite common for someone to have a problem, get told medically to rest, relax, take a few pills, it'll settle down; to brave it out, tough it out for four to six weeks. But it's getting worse and worse. They can't get back to work. It's not working. They decide they will go to a physiotherapist or a chiropractor, and if it's eight weeks from the accident, that could cut in one week after they've started treatment.

Eight weeks we regard as and submit is a reasonable time for preliminary care. We're not talking about six months or a year or on and on, and we think it should be from the time that treatment begins.

The final element of all of this is under (ii). The second point is that we suggest both. The patient's freedom of care is unfairly limited unless he or she can elect to change from one to the other, or vice versa. It's common out there in daily practice that people will consult either a chiropractor or a physiotherapist, will find after four to six weeks of care that this is not working. At that stage, they're getting advice from everyone—their mates at work, their spouse, everyone: "You should try a chiropractor," or "You should try a physiotherapist." The patient makes a decision after four or six weeks, "No, this care isn't working; I want to try something else."

The issue is, should the patient be able to do that? If you're from an insurance company, you might say: "No, we've already got six weeks. We've had quite a lot of care. We think the treatments are the same. You can't."

From a patient's point of view and from the point of view of reality, we would say, although there's some overlap in the practice, they're very different approaches to treatment and to management, and the patient should have their option. That, of course, is always subject to treatment plan. We're not talking about on and on, but we're saying the patient should have an option without having an assessor or an adjuster jumping all over them. This is a person trying to get better a short period of weeks after the accident where something isn't working—and we all know that many treatments don't work for all sorts of reasons—as to provide appropriateness, diagnosis etc. So that's rather technical and long, but there it is.

I haven't got on to the last point, have I? We know this will be controversial with the insurance industry, and it's in (b) at the top of 4. Where the insurer disputes any of the services and the matter is referred to a DAC, the incurred costs for services rendered on visits, but before receipt of the DAC determination, should be payable by

the insurer, but of course recoverable if found not to be reasonable and necessary. The arguments for that we list on page 6 under (d). I'm going to walk through those because I think they're important; it's probably quicker than if I ad lib.

DAC reports are expected to be received promptly, but experience shows they're often delayed. I was talking to a chiropractor who does a lot of these assessments—you're going to hear from him later today—and he talks of cases where he waits two or three months to get the necessary reports for him to be able to file an assessment.

Who should bear the risk of paying for the interim care which a health practitioner and the insured feel is reasonable and necessary but an assessor who is not a clinician says is not? Under draft section 42 at the moment it falls on the insured, who may not have the resources to continue this care and feels it's needed etc. What we're suggesting is that it's right that it should fall on the insurer in the first instance, with right of recovery.

An important point that we mentioned under paragraph (ii) at the end is, if the insurer is waiting for a DAC report, because it's of financial consequence to the insurer, the insurer is going to be pressing to get that report and it's in a good position to do it. It's got weight, it's got clout in the marketplace. It's referred the thing there in the first place. It can say, "I want this report."

If it's the patient who's paying, the insurer can go to sleep on the file. The patient's going to have no clout with the designated assessment centre at all. These delays do occur, the insurance company is not going to hurry it along and you're going to have people who are accident victims dealing with their injury also trying to deal with paying for this care, which has been challenged by an insurance company, that is said by their provider and felt by themselves to be necessary.

We're obviously not saying the insurance company should pay for this whatever the decision in the designated assessment centre, but pending that decision there should be payment. That's a balance-of-interests issue.

We then move to recommendation 3, which is that section 1 of the bill should be amended by the addition of a new section 7.2. Section 1 adds 7.1, which is the new committee that the minister is going to establish to get these DACs organized and put in place all their policies and procedures etc. What we're saying in 7.2 is that there is one matter that is of too great an importance to leave to the committee but should be enshrined in the legislation. It is, and I read from near the top of page 7, "The members of the committee shall include at least one representative from each of the health professions defined as health practitioners in the statutory accident benefits schedule."

Then related to that, in the schedule there should be a new section 60 which is a corollary provision. If you read it, it says that where an assessment is made in a DAC for the purposes of determining whether all or any of the health care services given by a practitioner are reasonable and necessary: (a) if it's made by one person, the health practitioner should be from the same profession, (b) if it's by a team, one member of the team should be from the same profession.

In paragraph 5 we say that there's a compelling need to define these matters in legislation for various reasons. The Ontario Insurance Commission has tried to leave this to policy; we attach policy that says this. It is not policy that's been honoured. We have a chiropractor coming this afternoon of whom you can ask questions if we run out time now. Chiropractic patients who get into a designated assessment centre get in front of an orthopod and a physio who say: "Why the hell did you see a chiropractor? You should be doing this." I don't think it is the plan of this legislation to have turf wars in designated assessment centres. I think that if the principles of freedom of choice of health care by patients and peer review are to be respected, this needs to be there, and this is the way we suggest that it is there.

The Chair: Thank you very much. We appreciate the input of the Ontario Chiropractic Association, and we will have that opportunity this afternoon. Thank you very much for joining us today.

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INSURANCE BROKERS ASSOCIATION OF ONTARIO

The Chair: The next presenter is the Insurance Brokers Association of Ontario; Mr Carter. Welcome.

Mr Bob Carter: On behalf of the Insurance Brokers Association of Ontario, I wish to thank you and your committee for allowing us the opportunity to express our comments on the draft legislation to amend the Insurance Act and other acts related to automobile insurance. My name is Bob Carter; I'm the executive director of the Insurance Brokers Association of Ontario. With me today is Michael Carberry, president of the Insurance Brokers Association of Ontario and a principal of Carberry Davis Insurance Brokers Ltd in Oakville, Ontario. Also with me is Diane Wigley, president-elect of the Insurance Brokers Association of Ontario and a principal of Consolidated Insurance Brokers in Don Mills, Ontario.

What we'd like to do is begin with a brief overview of the role of the insurance professional in Ontario's insurance community and the role of our association. We will then comment on the government's proposals for a revised auto insurance plan, introduced on February 9, 1996.

Professional insurance brokers act on behalf of their clients, the insurance-buying consumers of Ontario. Brokers purchase insurance protection for their clients from various insurance providers.

When a consumer suffers a loss covered by an insurance product, the insurance broker is usually the first person the consumer contacts at any time, night or day. Insurance brokers offer assistance and counsel for their clients throughout the entire claims process.

As independent insurance professionals, insurance brokers represent a variety of insurance providers, while an insurance agent is limited by law to representing only one company and its products. The insurance broker offers the consumer a choice of products and prices from a variety of providers.

The Insurance Brokers Association of Ontario represents over 8,200 professional, independent insurance

brokers, plus their support staff. The over 1,100 offices are located throughout the entire province, servicing the needs of the Ontario consumer. Our membership of independent business people are the front-line people who are the first to hear from consumers when an insurance product is not working. Therefore, we look at the design and content of the proposed reform in relation to its impact on the insurance consumer.

Whether an insurance product is no-fault, tort or a combination of the two does not concern us unless the consumer will be adversely affected. We are therefore here today to express our views on how the proposed changes will affect our clients, the insurance-buying consumers.

Mr Michael Carberry: In 1990, we made a presentation to the standing committee recommending a product that would be both available and affordable. The introduction of OMPP, Bill 68, accommodated these needs, but unfortunately, with its premature demise, we were unable to realize the objectives.

In 1993, we voiced concerns that the introduction of Bill 164 would adversely affect availability and affordability. We also expressed our concern about understandability. Bill 164 responded to neither our original two concerns nor the added problem of understandability.

Now, in February 1996, all our concerns have been validated. A consumers' group in Ottawa has also concluded that the product is not available and not affordable, and our clients continue to inform us that the product is certainly not understandable.

The new proposed legislation should resolve many of the above issues and provide a foundation on which to build a strong and stable insurance marketplace for the Ontario motorist.

We are pleased to see that you have empowered the consumer with the choice of purchasing coverage variables and indexation. This will allow them, in consultation with an independent insurance professional, to determine their specific needs.

The proposed initiatives in the legislation will deal with the systemic problem of fraud, which escalated with Bill 164. We support the five areas in the proposal which deal with the fraud issue: the disclosure of conflict, the cost recovery by the insurers and the three new offences in making a claim.

The new product appears to have the checks and balances which are necessary to deliver a price-stable product to the consumer while providing mandatory basic coverage.

Recognizing that the cost of insurance is directly related to the cost of claims, any improvement in benefits must be weighed very carefully against the potential increased costs.

On the question of availability, the proposed changes to the rate filing mechanism should provide a more competitive marketplace which will allow market forces and good business practices and principles to flourish. The initial response from the majority of providers is, "We will now be open for business."

On the question of understandability, Bill 164 produced an inordinate amount of ill-conceived regulations and created an excessive burden on the consumer. We are

pleased that the new proposal has taken into account the need for a more understandable product for the consumers of Ontario.

A review of the draft legislation: We applaud your objective to repeal the contentious portions of Bill 164 which will be replaced by the draft legislation presented on February 9, 1996.

We are optimistic that the expanded tort provision will provide access to the courts for innocent victims while controlling costs through reduced disability benefits and higher deductibles.

The new provisions for early notice of claim and opportunities for early settlement of claims will benefit all Ontario drivers. Costs should be contained while providing a mechanism for injured parties to receive benefits in a more timely fashion.

Ms Diane Wigley: With respect to accident benefits, we agree that the benefits should be reviewed by the minister every two years. We look forward to being involved in this process.

On income replacement benefits, we find that the changes to income replacement address the needs of the majority of Ontario motorists. Consumers should be given the option to increase the level of benefits to meet their specific needs.

Non-earners and caregivers: We accept the reduced benefits as shown under the proposal, since these individuals will have the ability to top up coverage or, if not at fault, have recourse through the courts.

On medical rehabilitation, including attendant care, we agree with the recognition of catastrophic injury. Your proposal provides for basic no-fault coverage for non-catastrophic injury and substantially increased limits for catastrophic injury. You have also provided the consumer with the choice of purchasing increased benefits to suit their individual needs.

On death benefits, we agree with the reduction of the basic benefits to \$25,000 on death, while maintaining the \$6,000 for funeral expenses. These measures will contribute to the control of costs.

On optional benefits, we agree with these top-up provisions. The mandatory optional benefits provide an excellent opportunity for customizing the insurance product to the individual consumer's needs.

Dispute resolution: We applaud the inclusion of an enhancement to early settlement resolution opportunities. Consumers are best served by timely and fair claim resolution, without having to access the courts.

On rate review, the concept of file and use should allow our providers to price their product more competitively, knowing that they can take corrective action, if required, without undue regulation.

Anti-fraud: Consumers are becoming more aware and better informed about the impact of fraud on auto insurance premiums. We and the entire industry must continue to work together with government to control, monitor and reduce all levels of fraud. Your anti-fraud measures—allowing insurers to request sworn statements and proof of identity for claimants; providing an explicit provision to suspend accident payments if there is wilful and material misrepresentation; tightening the initial notification and application period to 30 days; making it an

offence for any claimant or service provider to knowingly provide false information to insurers in order to obtain payment, and for failing to inform an insurer of a material change in circumstances related to the insured's entitlement to benefits; and increasing fines for drivers without insurance—should result in a substantial curtailment of fraud and eventual premium savings.

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On health care costs recovery, we are cognizant of the rapidly rising health costs in our province. We would remind the committee, however, that any rise in the cost of claims is ultimately reflected in premium costs to the consumer. We do understand the government's position that costs should be borne by users of services rather than borne by all taxpayers. The system must be fair.

Mr Carberry: We, as insurance brokers, have been involved in many other issues involved in the insurance industry. On the question of road safety, we support road safety initiatives. Lower accident frequency and severity will lead to lower insurance premiums. We urge that the government take stronger measures to curb the carnage on our highways. The Insurance Brokers Association of Ontario is committed to working with you to achieve a meaningful result.

Easier access to driver information at point of sale and easier access to insurance information by front-line law enforcement officers will ensure that consumers are properly rated and uninsured motorists instantly identified.

On the issue of discrimination, the present system does not permit the collection of information on individual policies relating to collateral benefits, income and occupation. To level the playing field, information should be available in the underwriting of all insurance policies.

On the issue of Facility, the Insurance Brokers Association of Ontario welcomes the opportunity to work with the Facility Association and the government to reform the Facility Association, the take-all-comers rule, and the insurance risk point system to provide a fair and equitable system of insurance for all Ontario motorists.

Mr Carter: The draft proposal addresses many of the concerns we expressed in our presentation of January 27, 1993. In particular, the system should move from one of entitlement to one of indemnification. The basis of insurance is to return individuals to the same position they were in prior to the loss, to the extent that money can.

The combination of this legislation and the appropriate regulations should result in readily available and affordable automobile insurance coverage in a stable marketplace. As the government proceeds with these regulations, IBAO welcomes the opportunity to be an integral part of the entire process.

The proposed legislation is a practical blend of compulsory minimum protection along with the opportunity to customize coverage to suit individual needs or requirements.

We applaud the government for taking the initiative which should result in long-term stability which will be of great benefit to all Ontario consumers. We recognize fully that the regulations will be the most important segment of this legislation. So let me reiterate: We want to be part of that process. We want to ensure that Ontario motorists get an auto policy that fulfils their objectives

and ours. It must be fair, it must be available, it must be affordable, and it must be understandable. Substantial rate increases are acceptable to neither our members nor our automobile insurance customers. We must work together to bring increases to a level that is acceptable to the consumer. Thank you very much.

The Chair: Thank you, gentlemen. Time does not allow for a round of questions. Thank you for making your presentation to the committee today.

Mr Silipo: Are you sure about that, Mr Chair?

The Chair: Yes, there was less than two minutes remaining. I'm sorry.

SPURGE NEAR INSURANCE BROKERS

The Chair: Next is the Spurge Near Insurance Brokers. Welcome to the committee, Mr Near. We have 20 minutes.

Mr Spurge Near: Thank you. My name is Spurge Near. I am president of the Spurge Near Insurance Brokers Ltd and a past president of the Insurance Brokers Association of Ontario.

Spurge Near Insurance Brokers Ltd has been looking after the auto insurance needs of hundreds of Ontario motorists since May 1967. As brokers, we try to understand the clients' problems and their needs as well as those of the insurers.

I congratulate the government on the proposed changes to the Insurance Act, the reintroduction of tort, the steps to minimize fraud by claimants against insurers, and the increase in fines for operating a vehicle with no insurance.

On the availability, auto insurance is compulsory in Ontario; it therefore should be readily available. This has not been the case in the last five years. From the brokers' point of view, one could believe that the auto insurance companies have formed a combine to suppress the sale of auto insurance. Brokers who try to place safe drivers on the open market are faced with contract cancellations for unbalanced portfolios or contract cancellations for loss ratios. Many brokers have had their contracts cancelled and have found their markets for auto insurance disappearing.

Portfolio balance: The average automobile insurance premium in Ontario is over \$1,000 per year while the average habitation policy premium is around \$400. There are between one and a half and two cars on average per residence. May I suggest that the auto insurance legislation include a section which would remove the balanced portfolio requirement from all insurers' contracts with brokers.

Loss ratios: With such a large portion of losses being paid under the no-fault section of the policy, and insurers are the ones who set the premium to be charged, how then does the broker get blamed for high losses?

Fairness to insureds: The auto insurance industry's treatment of its insureds has drifted down to the point where the term "fair" has no meaning or does not exist. In its place has been added "void ab initio" and "misrepresentation." I will give you one example of each.

On the void ab initio: An Ontario motorist buys automobile insurance. He completes and signs an auto

application truthfully. Five months later he is involved in an accident that is not his fault. The insurance company somehow finds out that the insured has since bought an expensive stereo which he had installed. Keep in mind the insured had not yet purchased the stereo when he applied for insurance. Prior to the accident, this particular insured had removed the stereo from his car. The insurance company is trying to deny the claim for damages to the vehicle, saying the policy was void ab initio. They claim he should have told them that he was thinking of buying a stereo when he applied for the insurance. This is a true story; it's in my office. Remember, the stereo was not in the car at the time of the accident.

Misrepresentation: I will again use an example. An insured applies for insurance. The insured states on the application that he has had only one minor speeding ticket in the last three years. The insurance company obtains a driving record which shows the applicant had two minor speeding tickets, the oldest of which was 34 months ago. He is refused insurance by the company for misrepresentation. This Ontario motorist is now sentenced to three years on the Facility market. Does the word "combine" ring a bell? I believe that the word "misrepresentation" in the proposed auto insurance revision should be preceded by the word "serious."

In closing, I would like to touch on the item of fairness again. An insured who has driven accident-free for 10 years and had insurance for that time with one company sells his car and cancels his policy. Three months later he decides to buy a car. God help him or her. The best most brokers can do is try the company he was insured with during that time and if lucky they will be able to give him or her a four-star rating. That is an increase of approximately 21% in premiums compared to his previous six-star rating, just for not owning a car for three months.

On behalf of hundreds of my clients, I want to thank you and your committee, Mr Chairman, for allowing me this opportunity to express my views. I only hope that maybe in some small way I might have helped you to make auto insurance available and fairer in our great province. I thank you.

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Mr Silipo: Thank you very much, Mr Near, for your presentation, and for the couple of examples particularly, which make the points quite clearly. Hopefully they're things we'll look at in terms of changes.

I wanted to ask you on some broader points, which I have to say to you in fairness twiggled to my mind also as I was listening to the previous presentation. We didn't get a chance to ask them. I think as a broker, you would be able to deal with some of those issues, I'm sure.

One of the points that was made by the brokers' association earlier was that the proposed changes to the rate filing mechanism would provide a more competitive marketplace. I found it interesting that in one of the earlier presentations this morning from State Farm, they pointed out that in fact the proposals, the regulations, are actually more complicated than the existing ones. They saw that as being something that would hurt the process rather than help it.

What I wanted to ask really more about was this question of fraud that we keep hearing about. Again, I say very clearly that I don't think there's anything in what the government is suggesting around tightening up the system that I have any trouble with. I would question the efficacy of some of those measures, but I don't disagree with them. I guess what I'm looking for is, what evidence do we have about this great growth in fraud that everybody is talking about? I haven't seen any. Are we dealing here with something that's real or are we dealing with something that people perceive is a problem?

Mr Near: Mr Silipo, first of all, I'm a past president of the Insurance Brokers Association of Ontario. In no way do I want to speak on behalf of the Insurance Brokers Association, because I'm not in that position.

Mr Silipo: I appreciate that.

Mr Near: Nevertheless, the question you've asked, yes, there is some fraud in the claims. I guess it's only natural that people feel it's a way of getting some money. You're unemployed or you don't have a very good job, and here's your chance to steal enough for the rest of your life. Bill 164 more or less gave some people that privilege and there is quite a lot of fraud going on.

Mr Silipo: How do they do it? I guess that's what I'm trying to understand. What is it in the present system that encourages or allows that fraud to be there? Again, I don't think anybody here would say that it should happen.

Mr Near: I think the biggest problem—and I haven't studied that one as much, because I'm not in the claims end of it that much—would be that it becomes a pension. The company can't cut them off while they're on it. That made it easier for the people to stay on it. In fact, I am told by claims people that if you've paid a guy for two years, you can't cut him off even if you know he's a phony and never was injured.

Mr Silipo: I find that interesting, because we also heard even just on the first day of submissions here in front of us a couple of examples of people—and certainly I know lots of stories of people, at some point in benefits payments, just being cut off without any explanation by the insurance company. It's something I really would like to see more information on.

If there's time, I'd like to get to the question of rates. Again, one of the other points that was made was that the benefits that people see—and I guess I'd like your perspective as a broker—the new system would allow you to customize the product to the consumer's individual needs. What would you as a broker say to the average policyholder that you now would be dealing with? When you look at the reduced benefits that are available, would your advice to them be to buy the additional coverage and, if so, what is your sense about what additional cost that might entail? Or would you say that the basic package would be sufficient for the average person that you would be selling insurance to?

Mr Near: In all honesty with you, I'm scared of that provision, because if you get into an accident and you didn't buy that extra coverage, you're going to sue me, saying that I didn't tell you about it, even though I might have. That part scares me. I would rather have the system maybe be at the \$600 limit than the \$400 limit. In fact,

when I was the president of the association, I argued with the minister then, Murray Elston, and we did bring it up from \$400 to \$600. That way more people wouldn't have to buy that extra thing.

That scares me because my errors and omissions coverage is liable to go sky high, when somebody can say, "You didn't tell me about the availability of this." That scares me. I don't like it. I would rather have it there and still only a certain percentage of people would be entitled to that amount. But the \$600, to me, is better level than the \$400.

Mr Wettlaufer: Thank you, Spurge. One of the concerns that our government has and that I personally have is availability of coverage today. Under Bill 164, the insurance companies have produced mountains of evidence to show that they have not made a profit in the automobile insurance field, and as a result, they seriously restricted their writings of automobile insurance, even to the point of terminating brokers' contracts, as you mentioned. Do you have any feeling from the insurance companies that they will open up the marketplace to writing more automobile insurance as a result of the new legislation?

Mr Near: At this present time my answer to that, Wayne, would be no. There's general speaking that it's going to open the market but I don't see it coming out that fast. Insurance companies—I'm not saying they're dishonest—have a way of hiding profits. If I look at a balance sheet of any insurance company, 10 years ago and now, you'll see that the retained earnings have substantially increased or they've paid out dividends during that 10 years.

They're the only type of industry I know of that can decide which year they're going to make money and pay tax, because they put reserves in for losses and they don't bother telling anything about the profits they make on the reserves they have. They've got to be earning, during the last five years, at least 7% to 10% on all the millions. In my own brokerage alone, I think they've got reserves of over \$10 million in losses. They don't give me credit for the interest they're making on those reserves.

Mr Wettlaufer: But would you agree that perhaps the demands of the shareholders are greater today than they were 10 years ago, that the shareholders are demanding a greater return on equity? We heard yesterday that shareholders of the insurance companies are in some cases fund managers, mutual funds. We heard also that some of the holders of the shares are large unions. Of course, everybody is concerned about their pensions and they're demanding a greater return on equity.

Mr Near: Mr Wettlaufer, we know one another. You've been in this insurance business on both sides of the market. You were a vice-president of one insurance company at one time and a broker at a very good brokerage in later years. In fact, you and I were on the board at the same time of the insurance brokers association. So I think you've got the answer to that question. Yes, they do have shareholders. Shareholders do demand profits, but they can still hide whatever profits they have from time to time with the reserves. There must be a better way of controlling reserves. I don't want them to be under-reserve, because then they won't be able to pay claims,

but there can be such a thing as overreserves and they can decide which year to show their profits at.

Last year, I understand, they were all showing pretty good profits, because they raised their premiums higher the year before to protect themselves in case the NDP won the election again. There you have it. It's a hard one to answer. I'm not in the head office of the insurance companies, as you were.

Mr Crozier: Thank you very much, Mr Near. It's nice to have someone before us this early in our hearings who is on the front lines. I suggest to you and to others that the public, having heard over a period of five or six years everyone promise rate reductions, minimum cost for auto insurance, stable rates, that the perception may be that this time we've arrived at it. In selling an auto insurance policy or in renewing one, if it comes in with a renewal rate that's increased anywhere from 8% to 9%, will you have a difficulty in explaining that to your client?

Mr Near: For the ones who call me and complain about it, yes, but that's normal. We've gone through this for the last four years, and we're not talking 8%, we're talking greater than 8% increases. Some clients might end up with a 20% increase. It is a difficult thing to try and explain, especially when the guy hasn't had any claims or anything to make it worthwhile why he got into it.

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Mr Crozier: What do you think the perception of the public is when we talk about stable rates?

Mr Near: I don't think they believe us.

Mr Crozier: That's nothing new.

Mr Near: You asked me the question. I don't think they believe us. The average policyholder does not believe anything that you as a government would do is going to make things any more stable. Besides, it's all so difficult. I've got to get on the side of the companies for a second here, too. They're not making fenders any cheaper than they did before. It costs more to fix cars and we keep trying to pay more in benefits. I don't personally believe that we're going to stabilize the premiums.

Mr Crozier: You don't believe that they can do that. You're saying the public doesn't trust the government to do that.

Mr Near: I'm not saying "trust." They don't think they can.

Mr Crozier: They don't think they can. Okay, thank you. I guess what you're saying is that if they don't believe it can be done, they'll accept an 8% or a 10% increase.

Mr Near: It's compulsory. What else can he do? He goes down the street, it's going to be 12%.

Mr Crozier: That's not my point. Obviously they're going to have to pay it, but will they accept it?

Mr Near: I don't quite understand the question. If they're going to pay it, they've accepted it.

Mr Crozier: The question is that people out there expect that stable rates mean no increases. That's my perception. I'm just saying that you're the person, you're the one on the front line who's going to have to sell this. The insurance companies aren't, the government is, although the government, I think, in the end, will be accountable for it. I just wanted your reaction. How are you going to handle this with your clients?

Mr Near: I can't sell the idea of a stable premium to anybody when I'm handing him a renewal that's 8% higher than it was the year before.

Mr Crozier: Okay. I guess that's the point I was getting at.

The Chair: Thank you, Mr Near, for your presentation to the committee today. We appreciate your input.

PROGRESSIVE CASUALTY INSURANCE CO OF CANADA

The Chair: Our next presenter is Progressive Casualty Insurance Co of Canada, Mr Rogacki. Welcome.

Mr Andrew Rogacki: My name is Andy Rogacki and I'm the president of Progressive Casualty Insurance Co of Canada. With me is Chip Conner who is our product manager for Canada.

I'd like to take a few moments to tell you about Progressive. We're part of the Progressive Corp, a Cleveland-based holding company specializing in automobile, motorcycle and commercial vehicle insurance. Progressive is the largest writer of auto insurance in North America through independent insurance brokers. We're growing rapidly, writing over \$4.3 billion of auto insurance in 1995, which is equivalent to the entire Ontario private passenger market, making us the sixth largest automobile insurer on the continent.

Progressive's roots are in non-standard insurance; that is, coverage for consumers whom other companies deem risky. However, in the US, Progressive offers coverage to standard and preferred consumers as well, insuring both good and bad drivers. We remain a small insurer in Ontario, writing roughly \$55 million of non-standard insurance in 1995.

We have had expansion plans ready to implement for the last five years, but we have waited, initially because the NDP government wanted to nationalize our business, and subsequently because the environment created by Bill 164 made expansion a bad business proposition. We applaud the government's resolve to banish Bill 164 from the marketplace and to introduce new, better auto insurance legislation. We want to recapture our growth momentum which was stunted in the September 1990 election.

The legislative proposal introduced by the government is a good foundation. Our comments this morning will focus on highlighting improvements to the proposed legislation and regulations.

As the IBC costing prepared by Mr Miller shows, the price trend of the proposed product is about 7% per annum. We believe that even this trend rate may be understated, given impending contingency fees for lawyers. Although the forecast 7% compares very favourably to the actual 11% to 12% annual increases under Bill 164 in 1994 and 1995, there is room for improvement in the government proposal to allow for greater price stability.

We believe that a new auto insurance system in Ontario should:

(1) Be easily understood by consumers and easily administered by insurers.

(2) Contain controls and tough penalties for fraud and abuse.

(3) Be based on the concept of indemnity rather than the concept of entitlement. As shown by Ontario's experience with both the Workers' Compensation Board as well as auto insurance under Bill 164, the concept of entitlement leads to abuse and high costs for everyone, exactly the opposite of what consumers want.

(4) Generate reasonable insurance rates which are not escalating rapidly.

(5) Be stable for the foreseeable future, reducing the need for additional review and change by government.

Finally, we believe that consumers are best served by a free, competitive market. The time has come to treat consumers as intelligent buyers, as the government's proposal with a base product and optional buy-ups does, allowing consumers to make choices regarding their insurance coverage.

Mr William Conner: In the context of these principles, we're recommending 11 specific changes:

(1) Both the draft legislation and the regulations require greater detail. We've worked with the IBC to produce a list of suggestions, additions and changes to the legislation and to the regulations. We encourage the government to review this list and to work with the IBC to improve the proposal as suggested in appendices C and D of the IBC submission.

(2) The government's proposed regulations need more controls with respect to the medical and rehabilitation coverage. The lack of these controls in Bill 164 has facilitated fraud, excessive treatment and conflicts of interest. For example, Bill 164 requires that an insurer pay now and dispute later for the first eight weeks or \$2,000 of treatments, which has resulted in rampant abuse. The proposed legislation in some ways has an even worse provision. An insurer must pay on demand, with no opportunity for dispute, for the first six weeks or 15 visits to a chiropractor or physiotherapist.

Under first-party accident benefits coverage, insurer and insured interests are the same: rapid recovery with a swift return to pre-accident circumstances. It is in insurers' own economic interest to provide intensive treatment immediately after the accident to quickly rehabilitate claimants. Given that prompt treatment is a common goal, the government should not tie insurers' hands by requiring payment on demand. This is a big cost-driver that can and must be tamed.

(3) The draft bill creates a new neutral evaluation as an additional step in mediation. Mediators are supposed to be neutral under the current system, so why create another level of unnecessary bureaucracy and expense?

(4) Designated assessment centres, or DACs as you've heard them referred to, have proven unworkable due to high cost, delay and the administrative burden involved in getting an assessment on claimants. Furthermore, DACs are granted geographic monopolies that limit competition and increase prices. We believe that the current DAC system and its attendant bureaucracy should be eliminated. If independent evaluation of a claimant is needed, we recommend that the OIC produce a list of approved advisers. Insurers could then choose an adviser from that list.

(5) We believe that the legislation should adhere to the concept of indemnification. For example, a minimum

benefit of \$185 per week for non-earners is unwarranted, as is continuation of income replacement benefits past the age of retirement. If cost stability is important, then hard choices need to be made even if these so-called freebies are politically popular.

(6) We will only have an efficient product when market forces are allowed to operate in the marketplace. The legislative proposal attempts to streamline the rate filing process, but does not go nearly far enough. We recommend a use-and-file process be put in place whereby an insurer can use any combination of classifications, rates and rules, but must file them with the regulator. Market forces will automatically prevent rates from becoming excessive, but cannot prevent them from becoming inadequate. Therefore, the review process should include, and be limited to, cases where the rates may be below cost or lead to insolvency, which would ultimately be borne by all insureds.

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(7) Facility Association issues need to be resolved. In 1993, the NDP government decided that the Facility Association was too large at 5% of the market and ordered the industry to reduce it by half. This irrational decision was despite ample evidence to the contrary. In fact, at 5% it was an average-size involuntary market in North America. The results were the take-all-comers provision, the risk-sharing pool and the risk point system. All of these impair the market's ability to function as a market and all do not work. They also subsidize bad drivers at the expense of good drivers. Facility Association has submitted proposals to Mr Sampson, which recommends the repeal of the take-all-comers provision, the risk point system and the risk-sharing pool. We support this proposal and believe it should be implemented as soon as possible. Facility issues cannot be ignored nor dealt with separately. They are not a symptom of the problem; they are a part of the problem.

(8) Formerly, the government disallowed the use of income, occupation and the existence of collateral income benefits in rating, despite evidence that such information was necessary to properly match risk with cost. However, group insurers have neatly sidestepped the regulation by selling insurance through employer or affinity groups. Clearly, if an insurance company sells auto policies, for example, to hourly employees of a given manufacturer's auto assembly line, that insurer will have much knowledge about their occupation, their wage level and the existence of any collateral benefits that they have. We believe that the use of these variables should be allowed for all insurers as part of the proposed reforms. The only logical alternative is to prohibit group insurance in order to ensure a level playing field and prohibit employer-based discrimination. This is a very important issue and cannot be ignored any longer.

(9) Currently, insurers cannot use not-at-fault events and claims under the no-fault coverages in rating or underwriting. Empirical evidence demonstrates that such losses are predictive of subsequent losses. Rating on not-at-fault events and claims under the accident benefits coverages should be allowed.

(10) Life and medical insurers have begun to exclude payments for claims resulting from motor vehicle acci-

dents. If this continues, collateral benefits will vanish for auto insurance claim purposes and the cost of auto insurance will soar. The OIC has the authority now to stop this practice and should act immediately.

(11) The legislation should facilitate the use of preferred provider organizations by insurers to direct claimants to specified health care organizations and automobile repair facilities. This would lower loss cost and ultimately premiums.

Mr Rogacki: Finally, let's address a key matter: the transition from Bill 164 to the new law. We offer the following two suggestions:

First, make the new law effective 30 days following proclamation. Bill 164 is so bad that every insurance company will be eager to settle claims under the new legislation and will prepare to do so in advance. Companies and brokers can and should begin training staff once the legislation reaches second reading. From an insurer's viewpoint, this transition will be very easy.

Second, deal with all the issues at once: the new law, Facility Association, new rating variables etc and introduce stability into the marketplace once and for all. There will be dislocation, but let's get through it in one bold stroke. A slow transition would guarantee that a different group of consumers is unhappy every year until the transition is finished.

If the vast majority of these suggestions is not introduced with the new legislation, the annual cost trend will be about 7%, but if our suggestions are followed, we believe the figure will be much closer to 5% to 6%. Once Bill 164 is repealed, the reparations system changed and the take-all-comers provision eliminated, the market will become very competitive, availability will cease to be a concern and consumers will benefit.

Let's not have auto insurance as a hot issue again for a long, long time. A stable environment that allows the insurance industry to improve its product offerings, increase efficiency and decrease prices is best for everyone. Let us get back to business.

Thank you. We'd be pleased to respond to any questions you have.

Mr Douglas B. Ford (Etobicoke-Humber): Mr Rogacki, will this new product help brokers? Will it lead to fewer broker cancellations? Will it lead to brokers being able to represent a larger number of companies and offer the consumer more choice?

Mr Rogacki: The answer on all counts is yes. We believe that companies will want aggressively to market auto insurance once again, therefore brokers will have more choice of companies and markets and therefore consumers will have a much easier time shopping for insurance.

Mr Ford: Do you think it will reduce rates with competitiveness?

Mr Rogacki: If costs decrease, rates will decrease.

Mr Ford: So you think it'll make a better competitive situation.

Mr Rogacki: Yes.

Mr Sampson: We heard yesterday and again today that 7% to 8% is the guesstimate, by the industry, for the future rate increases. Your indication is today that you might be able to get a point out of that. I think that was

the same comment we heard yesterday, if certain other provisions are added to bring control back. Where is the increase left? How come we still have 5% to 6% base increase there year over year in spite of the fact that we've delivered a package that does bring the controls back in the industry's view?

Mr Rogacki: I'm not an actuary, but looking at the work that Mr Miller did, the increases came from two places, the med rehab coverage, the accident benefits part, and BI. The accident benefits was trending at about 15%, and that was a capped figure; the true number was much higher, and the BI, the bodily injury part, the tort part was about 7%. Clearly, to get down the cost of increases in insurance, we must control the trend in accident benefits and rehab in particular, and to do that we need tight controls. That is very difficult.

Mr Sampson: But you've got them here and we still have price increases, so where's the—

Mr Rogacki: We don't quite have the tight controls in the legislation yet that we suggest. But mind you, the medical and rehab industry costs keep increasing year after year and the government has not been able to slow down the increase in medical cost substantially, so we simply reflect that that takes place.

Mr Kwinter: Thank you very much for your presentation. I noticed in your material you are concerned about the possibility of contingency provisions being given to the legal profession and what that will do to premium rates. You're also concerned about the health care cost recovery in the private sector. I'm sure you know that in the draft proposal of this government they are calling for OHIP to get health care cost recovery. What is that going to do to you with the premium rates if both the contingency and health care cost recovery are allowed, or mandated more than allowed?

Mr Conner: I'm sure there's not a good, simple, glib answer to that. I can respond that, having looked at Mr Miller's work which was tabled yesterday, my understanding is that he's made no provision really for either of those two factors. So the introduction of an additional recoverable amount might be passed along to consumers in the form of a different rate.

Separately, contingency fees in other jurisdictions have caused an increase sometimes in utilization of legal services, bringing forward more claims than might otherwise have been brought because there's very little downside risk to the plaintiff in that case.

I don't think there's a simple, quantitative answer to your question but I think it's fair to say that both would be cost pressures on a new system.

Mr Kwinter: That is the point I want to make. It was interesting, you appeared the other day with the IBC, and I'm glad to get the opportunity to question you about one of the statements that you made. You said that your company is in what you might term the high-risk insurance business. You take people whom others won't take, and I assume the reason you do that is because you can make money at it. Obviously, that's what you're in business for. You said that you're out of the standard market, but that if this particular legislation goes in with your recommendations, you would be back in the market, which means you can make money in that market.

My concern is, and this is something that is unfortunate, that everybody who appears has, and again not in the negative sense, a conflicting interest. You want to make money and you say, "If you give me this product, I can make money," and the lawyers say, "If you give me this product, I can make money because I can take people to court," and you get the health practitioners coming in and saying, "If you allow me to do this, then I can make money." Everybody is making money but is costing the purchaser of your product more money. I think this is what we're trying to resolve, so that we get a balance.

No one is suggesting that you should be in the business and be philanthropic and give people a product at a loss, but somewhere along the line the issue of affordability has to be addressed.

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Mr Rogacki: Two things to what you said. First of all, I think I said yesterday that Progressive's roots are in the non-standard market, that Progressive never sold standard and preferred business in Ontario and that we've had plans for a number of years to get into that market in other products, but we basically were held back first by the nationalization potential and then by Bill 164, which made it a very bad business proposition.

The idea is that if legislation changes and does provide us an environment which is propitious to business, we will be aggressively expanding in a market. Whether it is standard business or other products doesn't matter; it will be a good business environment again to write insurance and we'll be back in business.

The second part you talked about, affordability: Yes, it is absolutely a concern to everybody. The only answer I can have to affordability is that there are some 100-plus companies in the market, it is a very competitive market and will be even an increasingly competitive market, so consumers will have a choice.

Mr Silipo: As I would try to explain this issue to a typical constituent of mine who has been complaining about the fact that insurance rates have continued to go up under all governments, why would it make sense for me to tell that constituent that under this new system—as you're saying—there will be a greater incentive for insurance companies to sell their product, if I'm not able to tell him also that as a result of these changes he's going to be able to get insurance at a lower cost than he's getting now, if at the same time he is getting less coverage than he's receiving now? Why would it make sense to that typical constituent of mine to see this as a great solution to that ongoing problem?

Mr Conner: At the risk of being flippant, I think in phrasing your question you've in some ways answered it: that governments have been interceding in this issue for a great many years now and have demonstrated a keen ability to interfere with the behaviour of the marketplace, that what this legislation does, at least in part, is to return some measure of competition to the industry beyond what has been taking place for the last several years and, as Mr Rogacki has pointed out, to create an environment under which insurance companies have an appetite to write business, as distinguished from not to write business.

Mr Silipo: I take issue with you on that. If you recall—go back in time a few years when we as a party

took the position that we did towards public auto insurance—it followed a period of time where there had been huge increases in prices at a time when the marketplace was pretty free. I'm not sure that by simply returning this to the marketplace, to use your phrase, we're going to be giving the average consumer a great sense of comfort that they're going to be taken better care of and have a good product at a reasonable rate.

Mr Rogacki: Forgive me, but as a matter of historical perspective I believe we have a difference. When you took over, OMPP was working, was beginning to work. Had you left it alone and had you played with it, modified it, made it slightly better, we would not be in the same place we are today because Bill 164 was a mess.

Mr Silipo: If we're talking about, within the present system, one of the big problems, as I've continued to hear in these presentations, being the big costs or the bulging costs of rehabilitation, why is it not possible to deal with those issues, and why is it necessary to throw out the whole system that exists as a way of getting again that right balance between good rates and good product?

Mr Rogacki: Because the Bill 164 system is based on a concept of entitlement, not indemnity, and it's a gold-plated Rolls Royce for people who don't need it.

Mr Conner: And had to be.

Mr Silipo: Are you able to show me, because I haven't seen them yet, that that has resulted in people getting more money than they're entitled to get? I've heard that phrase a number of times and I still don't understand what it means. I still don't understand how it is that under the entitlement provisions, people are getting more money than they should get. That, I think, is the logical conclusion to what you and others of your colleagues have been saying, that somehow people are getting more money under the present insurance system than they should be getting. As I understand it, there are caps in terms of what people get. If you look at the \$1,000, that's not something that everybody's entitled to; that's dependent on whatever they were earning before and it's done as a percentage of what they were earning and so on and so forth with each of the other areas. So how is it that people are getting more than they should be getting?

Mr Rogacki: It's really simple. It's a lack of controls in the system and the ability of an insurer to control claims on an individual basis. When you take an individual claim to which an insurer can't say no, can't stop payment on an individual basis, and you multiply that times millions, that's how you get the abuse and that's how you get the cost increases.

Mr Silipo: Why not deal with the problems of abuse rather than throwing out the whole system and lowering benefits for everyone?

Mr Rogacki: It's structural.

The Chair: Thank you very much, Mr Rogacki and Mr Conner, for your presentation, and we thank the Progressive Casualty Insurance Co of Canada too.

That brings to an end our morning session. We do have one item of business. Last week the member for Mississauga South raised a point of order with respect to the scheduling of a member as a witness before this committee.

At the outset, it must be acknowledged that members of the Ontario Legislative Assembly do have many opportunities to voice their views on a given issue, whether speaking in debate in the House, whether participating as a member of the committee during public hearings or as a member not of the committee also present. In my opinion, members should be encouraged to use these avenues to express their comments and concerns. Nevertheless, my review of past committee practices and precedents does indicate that members have indeed been scheduled to appear as witnesses before Ontario legislative committees. Such appearances are, however, with the agreement of the particular committee.

In this instance, the member for Welland-Thorold requested to be scheduled at our hearings in Toronto. The member's name was on the list of potential witnesses that was provided to and reviewed by each of the three caucuses. The clerk of the committee was duly instructed, by motion of the committee adopted on Monday, February 12, 1996, to schedule everyone who had registered a request to appear in Toronto. I must therefore rule that the member for Welland-Thorold is properly scheduled as a witness before this committee.

Thank you. I remind the committee that we will reconvene at 1:20 pm. This committee stands in recess.

The committee recessed from 1207 to 1320.

ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

The Chair: We have with us as our first depute this afternoon the association of ARCH, a legal resource centre for persons with disabilities, Mr Harry Beatty. Welcome.

Mr Harry Beatty: Thank you, Mr Chairman. ARCH is a community legal clinic which has served people with disabilities since 1980. We have been involved for about a decade in the automobile insurance reform debate. Actually, to a large extent I have been personally involved. I have listed some of the committees I've been on on the second page of the presentation; most recently a member of the accident benefits advisory committee at the Ontario Insurance Commission and during the last couple of years the chair.

In the debate on auto insurance, throughout the years we have sought to bring an independent perspective, independent of lawyers, insurers and rehabilitation professionals, and to try and focus on those aspects of the various packages that would be of most importance to people with disabilities. Clearly today we are only able to give a preliminary reaction to the extensive reform package released on February 9, and it's our hope that there will be some possibility for future consultation as more information about the new proposals are made available.

We thought it was worth mentioning at the outset that the underlying problem in this area continues to be not the compensation package but, in our view, the devastating injuries and death caused by motor vehicle accidents. While we are not expert in the area, we certainly want to encourage the government to continue with all of its safety-related measures, including vehicle and road safety, driver education, particularly directed at younger drivers, and prevention of offences like drunk driving.

As a general principle it is ARCH's position that automobile insurance premiums should pay for the consequences of automobile accidents. In media coverage of the issue, and I'm sure in what you hear from the public as members of the Legislature, people are quite focused on the premiums and that tends to become the major issue, which is understandable because all drivers have to pay premiums but it's only the unfortunate few where individuals and family members are personally affected. But I think it's worth keeping in mind that if it was really presented to people, if they wanted some of these coverages compared to the cost, for example, the attendant care benefit, do you really want to save \$10 or \$15 or \$25, whatever it is, in premiums at the cost of having that reduced if you're one of the few who are affected?

If automobile insurance premiums do not pay for the costs of disability arising from auto accidents, then someone must pay. It may either be the individual, if they have resources, but more often the family providing support in kind, often through unpaid caregiving by a spouse or a mother. But ultimately if these plans don't pay and the person winds up in a long-term-care facility or dependent on public services, the cost returns to the taxpayer.

For that reason, we're pleased to see in the bill the provision that would provide for some assessment of health care costs against insurers for accident injuries. It's logical that that be there and that the taxpayer or the public system of health care should not be covering automobile injuries which should be paid for in that way.

The basic model has of course changed in Ontario a couple of times in the last few years. The draft bill proposes a return to a system more dependent on tort. On page 4 of our submission we list a number of concerns with the return to tort.

Just to highlight the main points, clearly there is limited public support for at-fault drivers, particularly people who are clearly, through their own negligence or wilful misconduct, responsible for their own injuries. But in the legal sense the group of at-fault drivers also includes those who may be just guilty of a moment's inattention or whose accidents are perhaps caused by road conditions. They skid off the road and there's nobody there to sue. But they're really not in the terrible drivers or drunk driving category. Even where at-fault drivers are responsible for their own injuries, the point I just made was that if rehabilitation or long-term care in particular are not paid for by automobile insurers, then it will be the families that are asked to pick up the slack or the government.

As well, we believe it's important to keep in mind that the way the tort personal injury system has worked, innocent victims are not necessarily fully compensated. We received numerous calls over the years at our office about people who have concerns about the tort system, although, to balance it, there are other people who have received significant awards as well. But people may have problems proving their claims. Someone may have forced them off the road, but if they were knocked out, they may not be able to remember. A difficult situation is where the negligent driver, the at-fault driver is actually

a close family member, and this may create an emotional obstacle to full pursuit of the claim in an adversarial system.

There's also the limitation created by liability coverage. Admittedly, I think most drivers in Ontario would carry \$1-million coverage or at least \$500,000, but it can occur in a catastrophic case that there is only the minimum coverage, which is at \$200,000, and that's what's available in hit-and-run cases if the driver can't be identified. So what is actually available in catastrophic cases may be much less than the theoretical full compensation offered by the tort system.

There are also the legal and administrative costs associated with tort, and finally a concern that in the past the tort system in a sense polarized health and rehabilitation professionals into those primarily aligned with the plaintiff's bar and those primarily aligned with insurers. This has clearly not ended as a result of no-fault, but we still have concerns that this kind of dynamic may be reinforced.

In fairness, we recognize that the package does contain a number of proposals to limit the administrative costs of tort, to encourage early settlement and so on, and we think on the whole the whole system should be looked at carefully before, once again, we have a fundamental change. There may be some possibility where cases have both a tort and no-fault component of having some kind of integration of the dispute resolution process.

1330

I want to comment briefly on the rehab system, although others much more knowledgeable will appear. I would start by saying that a couple of years ago I was one of the participants in the Task Force on Rehabilitation and Long-Term Care Benefits appointed by the previous government, with representatives of the insurance industry. That task force made fairly strong recommendations, I believe, about addressing conflict of interest within the rehabilitation and legal communities.

We were concerned that this was not really addressed. The provisions that are in the draft bill proposed by the Ministry of Finance to deal with conflict of interest as well as outright fraud, while we haven't examined them in detail, seem to be a very reasonable beginning. Clearly, given that there are scarce dollars, they should not go on inappropriate services.

We are also pleased to see continuation of the designated assessment centre system. We would continue to support that process, which also came out of the task force, even though we recognize that there have been problems, largely because of the very short time frame in which the whole thing had to be set up when they started a couple of years ago. Nevertheless, the direction of encouraging centres of expertise and some accountability and trying to move away from the polarized system we would generally endorse.

In terms of specific things that we did not agree with in the bill, one major concern would be the definition of "catastrophic impairment." If you don't make that definition with a serious injury, then you're limited to two years' long-term care and \$75,000 in rehabilitation.

Again, I believe others who are more knowledgeable on specific injuries may address this, but our general

concern to start with is that there appears to be an intent in the definition, notwithstanding a general inclusion clause, to exclude people whose injuries are significantly psychiatric or psychological in nature or involve extensive pain-related impairments. Consideration, we believe, should be given to looking at the definition to ensure that these diagnoses can be recognized as catastrophic in appropriate cases.

There's no doubt that there's a lot of medical controversy about the assessment of these types of injuries, but we don't believe the medical controversy should be settled by definition. While these diagnoses may sometimes be questioned, we also believe there are cases in which they genuinely apply.

Finally, and I think our most serious concern about the package has been left to last, is the reduction of the attendant care benefit. We do not believe there is a huge cost saving by limiting the maximum back down to \$6,000 rather than \$10,000 and imposing the lifetime \$1-million cap. Without seeing the costing, we don't know how much money is involved but these high levels are clearly only reached in the most serious catastrophic cases and, as I argued earlier, we believe that they will not always be picked up by the tort system even for innocent victims.

This kind of cap, which just says, "Here's a maximum," rather than looking at the legitimacy of the claim, simply takes the most serious claims, those involving children and young victims and cuts the claim off at a certain arbitrary limit. Although cost control is a legitimate objective, we believe that this is not an appropriate way of achieving it.

That's my presentation basically.

Ms Castrilli: Mr Beatty, I have the pleasure to see you yet again. You are a most industrious member, may I say. I'm interested in your analysis with regard to the tort system. I gather from your presentation that you would seek to go back to the no-fault model as a better model. It might surprise you to know that representatives of the plaintiff's bar that we've had here have also rejected the current system as not being a very good system for victims.

The conclusion, and I'd like your comment on that, is that this bill really combines the worst of all possible scenarios: that it takes away some of the protections that might have been under the no-fault but in fact creates some real difficulties, and that the average wage earner in the end, is the contention, ends up not being any further ahead. If the purpose of insurance would be to return people to the position where they were, roughly, before the accident, this system doesn't do it, and we've had some ample calculations with respect to that issue. I wonder if you might comment on that.

Mr Beatty: This package has been presented as a starting point for discussion, and I think I indicated in my presentation that while there are certainly some components we would disagree with, there are others that I think are worthy of discussion and working with.

By pointing out the limitations to tort, we are not saying that we are unequivocally advocating a no-fault system or that tort shouldn't be part of it or that the fault principle is wrong, because many in the disability com-

munity—although I wouldn't say everyone, there are certainly people who support that. At the same time, unfortunately, we believe it has a significant cost, and I think it's important before the government passes this package to be aware of what the true costs are.

It's not only the cost. While we hope the reforms will mean that the cases are not caught up in the overloading of the courts problem, it appears to us to be somewhat probable that that may happen, given the general issues affecting the justice system at present. That's why we hope that perhaps some coordination of the mediation and arbitration system at the insurance commission with the court process might be possible.

Ms Lankin: In a couple of areas of your presentation you've touched on this issue that if benefits aren't covered under the insurance system, whether they are for at-fault drivers or whether they are for innocent accident victims, but through either the caps on the benefits under no-fault or through tort they don't get fully covered, and caps like the reduction of attendant care, the problem is it falls back on alternate systems. In many cases, that may well be the tax-funded health care system. I would imagine that ARCH recognizes the difficulty with this, given the pressures in the health care system and the people on whose behalf you advocate seeing reduced access to benefits and supports that they need.

We saw some tables this morning in a presentation from State Farm that showed over the last couple of years under Bill 164 dramatic increases in costs in medical rehab care, including attendant care, for example, and some other forms of services in that area. It strikes me that much of that is because these are areas that we're learning more about in terms of how to provide services to help people remain independent in the community. In the past, many of those people would have just been perhaps institutionalized and the state would have picked up a cost in a different way.

Could you comment on that, and particularly if you have any examples or any case studies that may well not be accident victims but that look at costs in the community versus institutions and that sort of thing?

Mr Beatty: I think a starting point has to be the theory behind OMPP and Bill 164 and so on. They were deliberately created to increase spending on rehabilitation and long-term care because of the theory that in the long run it would be cost-effective. If you spent more at rehabilitating accident victims early on, for example, ensuring that a child or young person got involved in the education system, got accommodation to live at home and so on, down the road you would have a participating member of the workforce who would be a taxpayer rather than a dependant.

1340

Whether the system would actually do it in the long term, I think no one really knows what the long-term impact of that spending will be because it's still pretty new. We don't have people who we could look at 10 or 15 years down the road in this system and say, "Here's the outcome." Clearly, we know many individuals, including the president of our own organization, who have had productive careers in the community after major trauma. But really to say in terms of statistics, is it

working or isn't it working, the hope was that the accident benefits advisory committee would provide that monitoring over time, but with the programs only being in place two or three years, you don't really have the long-term picture. Again, maybe individual rehabilitators who have been more directly involved with individual cases would have a better perspective.

Mr Ford: Mr Beatty, in order to ensure the level of benefits to the injured accident victims that you advocate, would you make any change to the provisions relating to the property damage? What might those changes encompass?

Mr Beatty: I really appreciate your raising that question. We're certainly pleased to see that if there's any kind of fraud involving repair and so on that that be addressed. That seems like a good beginning.

If you're looking at the overall premium, you could make it cheaper, Mr Ford, by having folks drive with a bigger deductible for property damage. I guess the problem is that people who were in accidents then would be upset that they had to pay more out of their own pocket, but if it's really a choice between that and the attendant care maximum, it's really sort of the interests of the few who are badly hurt against the interests of the great majority of drivers, I guess, who are more likely to be in a fender-bender and want to claim property. I guess that's what you could look at, things like deductibles under property damage.

The Chair: Thank you very much. We appreciate ARCH and you, Mr Beatty, presenting to us today and providing us with this information.

ONTARIO ASSOCIATION OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Chair: We now move to OSLA. I usually don't use acronyms, but I'm going to this time.

Ms Maria Scaringi: We will need a projector and a screen.

The Chair: It will be set up for you. Do you have any introductory remarks while we're setting up?

Ms Scaringi: We will attempt to do both a visual and an auditory presentation, quite apropos to the field that we're in.

The Vice-Chair (Mr Tim Hudak): Go ahead when you're ready.

Ms Scaringi: Mr Chairman, members of the committee, may I introduce my colleagues, Michelle Cohen and Joanne Wilk, along with myself, Maria Scaringi. We are here on behalf of the Ontario Association of Speech-Language Pathologists and Audiologists, OSLA.

Speech-language pathologists and audiologists are regulated health professionals and belong to the College of Audiologists and Speech-Language Pathologists of Ontario, CASLPO. The mission statement of CASLPO is to regulate in the public interest the practice of the professions and to govern its members in accordance with the various acts, including the Regulated Health Professions Act of 1991. Our clinical work includes assessing and treating disorders in communication as a consequence of motor vehicle accidents, MVAs.

Judging from the facial expressions, I assume that we're integrating all the visual input.

Interjections.

Mrs Marland: Actually, if you came more to the middle, and the screen has to come out. It's blocked by the corner of the wall.

Ms Scaringi: As you can see, integrating input auditorially and visually is quite a complex task.

Communication impairments include difficulties with speaking, understanding, reading, writing, cognitive or thinking skills, social skills, voice, swallowing or hearing.

Today, our purpose is to highlight OSLA's position on selected issues in response to the draft legislation. The first issue is: Communication needs to be included as a category in the definition of "impairment." The second issue is that speech-language pathologists and audiologists must be included in the definition of "health practitioners." Finally, the third issue is in the definition of "catastrophic impairment." The Glasgow coma scale should not be the only measure used to determine whether a brain impairment is catastrophic or not.

Communication as a separate impairment and speech-language pathologists as health practitioners are intertwined. Communication disorders are very complex and require speech-language pathologists for identification and treatment. In acquired brain injury, the cognitive communication impairment results from the interaction of thinking skills and language.

Let us illustrate. If an individual has difficulties following conversation, then a speech-language pathology assessment is necessary to determine the underlying cause or causes. For example, the problem may be language-based, that is, they do not understand the grammar, meaning or vocabulary of the message. On the other hand, the problem may be cognitively based, that is, they do not attend to the information or maybe they do not process the information quickly enough. If rehabilitation is to be effective, then the underlying impairment must be determined. Speech-language pathologists have expertise in identifying cognitive communication impairments and developing associated treatment plans.

1350

Individuals experiencing undiagnosed communication impairments from brain injuries can experience significant and often catastrophic difficulties in integrating into their former lives. Cognitive communication impairments are often overlooked by insurers, health care professionals, employers and teachers, resulting in an epidemic of silent sufferers.

To illustrate these points, allow us to present a case example. In order to maintain client confidentiality, certain identifying information has been changed. AB was a 35-year-old articling law student in her final year. She sustained a brain injury in a motor vehicle accident in 1989. At the scene of the accident, she was unconscious for less than 20 minutes. She was rushed to hospital and assigned a Glasgow coma scale score in the range of 13-15, which would indicate a mild impairment. After a brief period of observation, she was discharged home. The following day, she returned to hospital with symptoms of headache and a memory problem.

Several weeks later, she tried to return to work but was unable to perform at pre-accident levels and had to resign. Two years post-accident, she was referred to a speech-language pathologist for assessment. Results revealed a rare reading disorder as a result of the accident which was not identified by other professionals. This reading disorder precluded AB from succeeding at her previous work in any capacity and, more important, what saddened her most was that she could no longer read to her two-year-old son. Until the communication disorder was identified, AB suffered in the silent epidemic.

This case illustrates that communication disorders do occur in isolation of other impairments. Legislation must therefore acknowledge communication as a separate category of impairment. Communication should not fall under psychological, physiological or mental categories.

AB needed the type of rehabilitation as outlined in the draft proposal in section 16, rehabilitation benefits. But how would she get these services without the appropriate health practitioner to identify the impairment and write the treatment plan? Speech-language pathologists should be recognized as health practitioners. It is common sense that experts in a field assess and write their own treatment plans.

Michelle will now discuss the issue of using the Glasgow coma scale as the only measure to determine whether brain impairment is catastrophic.

Ms Michelle Cohen: It is our position that the Glasgow coma scale should not be the only measure of brain impairment. This scale is a measurement tool used to assess level of coma; it is only a general guideline, and it does not predict specific outcome. We believe that the determination of "catastrophic" needs to reflect not only the actual impairment but the impact it has on the person's daily life.

We will illustrate our point through a comparison of two cases, KP and AB, who was introduced earlier. Again, in order to maintain client confidentiality, certain identifying information has been changed. KP, a 30-year-old male, was involved in a MVA in 1992. He was unconscious at the scene of the accident and remained in coma for two weeks. He was assigned a score of less than nine on the Glasgow coma scale. Both these individuals were functioning at a reduced capacity in comparison to their pre-accident status, but according to the draft proposal only KP would be labelled with a catastrophic impairment.

The different impacts these individuals have on society is shocking. AB cannot work and is presently home collecting CPP benefits. KP was initially unable to return to his pre-accident vocation as a second-year university student studying accounting. However, with rehabilitation, he successfully completed his program and is currently preparing to write the board exams while articling full-time.

AB is receiving CPP benefits of approximately \$12,000 per year, which if collected until age 65 will cost society over \$360,000. On the other hand, KP will be a contributing member of society and over the next 35 years should contribute in excess of \$500,000 in income taxes.

It is our opinion that KP received the required rehabilitation in order to succeed thus far, and will continue to

require periodic rehabilitation when presented with new challenges in life. AB did not get this opportunity. We feel that AB's case has proved to be more catastrophic than KP's.

These two case histories, which are typical of the clients we treat, highlight a number of issues. The Glasgow coma scale does not take into account the impact or handicap the injury has on an individual's functioning in society, and therefore cannot predict functional outcome.

Many clients with a GCS score of 9 to 15 will need to surpass the \$75,000 limit as outlined in the draft. Their deficits may have an impact on their lives equal to someone who has a bilateral amputation. The difference is that you can see the latter; you cannot see the former. Brain injuries are often invisible.

Therefore, the GCS cannot be the only determinant of whether a brain injury is catastrophic. A scale such as the one illustrated in the handout could be used in conjunction with the GCS score.

Mr Chairman and members of the committee, on behalf of OSLA, we urge you to consider changing the following three definitions: First, "impairment" should include communication impairments; second, "health practitioners" should include speech language pathologists and audiologists; and finally, "catastrophic" should include other objective measures in addition to the GCS score for brain impairments.

To conclude, we would like to leave you with an unsolicited letter to Mr Rob Sampson from a client with an acquired brain injury. This client was an award-winning journalist who could write a front-page story in a matter of minutes. It took her days to put together this letter which you will find in your package. Her score on the Glasgow coma scale was 15 out of 15. Thank you.

Mr Silipo: Thank you very much for the presentation and for making the argument about the usefulness of rehabilitation. You've given some pretty useful indications of things you think we need to change in the proposal. I wonder if you could address at the same time something we've heard a fair amount about, and you may have heard some of it if you've been here for some of the previous presentations, that it's the bulge in the costs of rehabilitation that is one of the big reasons costs are projected to go up in terms of premium costs. Is there a way to mesh the continuing emphasis on rehabilitation, which you clearly are saying we should continue to have in the system, with a way to deal with that concern?

Ms Scaringi: We've thought long and hard about many of the points you've just brought up. The one thing we have to keep in mind is the fact that brain injuries are very, very difficult to fake. They need the support as outlined in section 16 on rehabilitation benefits, and I believe they need to be looked at very closely.

1400

Mr Sampson: A quick question. The individual, and I can't remember, KV, or what—

Ms Scaringi: Was it a female or a male?

Mr Sampson: The one who did not pass the scale.

Ms Scaringi: AB.

Mr Sampson: Would the expenses associated with the recovery have fallen within the \$75,000 limit we have, or did they have to spend more to get to the stage of recovery they eventually got to?

Ms Cohen: That's a good question, and it's hard to know. She fell under the old tort system, so she lost the window of opportunity. By the time she saw a speech-language pathologist, the \$25,000 allocated to her had been spent and her most debilitating deficit had not yet been identified. So it's difficult to answer that question right off. She did have other deficits, and the \$25,000 went to them.

Mr Kwinter: Thank you very much for your presentation. We've had various groups representing various sectors in the health care field coming forward asking that they be included in the definition. I'd like to explore the practicality of what it does for you. For example, usually in conjunction with that, they also want to make sure that when there's a DAC they have someone representing their particular specialty representing them so that decision can be made. How do you see that working? Is it going to be a very practical thing when there is a wide range of health care providers categorized in a broad sense but not in a specific sense?

Ms Scaringi: I think that will require a lengthy answer, but I'll make it very short. The basics of rehabilitation identifying are based a lot on the trust of that profession. For any of the individuals we're working with, who have difficulty with thinking, processing, speaking, getting their thoughts together, that affects their daily life, and that is the field we work in. Those persons, whether they can get to work or whether they have a job, need to work with those strengths and weaknesses, and they need to be addressed by a speech-language pathologist because they're in the areas of cognitive and language.

The Vice-Chair: On behalf of the standing committee, thank you for your presentation today. Thanks also for your patience with our equipment. Have a good day.

Ms Scaringi: Thank you. It was a great test.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Vice-Chair: The next delegation to appear before the committee is the Canadian Federation of Independent Business, Judith Andrew.

Ms Judith Andrew: Thank you, Mr Chair. My name is Judith Andrew. I'm the director of provincial policy with the Canadian Federation of Independent Business. I'm joined today by my colleague Colleen Ladd, who is our director of member services.

Our presentation to you today is entitled Auto Insurance Reform: Four on the Floor. I guess that's a fairly cryptic reference to the various plans we've seen in the last several years: the old tort, the OMPP, Bill 164 and, currently on the floor for debate, the government's draft legislation.

The Canadian Federation of Independent Business appreciates the opportunity to appear before this standing committee respecting the government's draft legislation to amend the Insurance Act. We're a national business association representing independent Canadian-owned businesses before government. About 40,000 of our 87,000 members do business here in Ontario.

At the outset I'd just like to point out that the profile of business in Ontario is overwhelmingly small. Small

business is the predominant form of business. When you look at the total number of firms in Ontario, numbering over 300,000, more than 96% of them have fewer than 50 employees. In fact, 72% of all Ontario firms employ fewer than five employees. In addition, an estimated 600,000 individuals in Ontario are self-employed.

Of course all our members, and self-employed people certainly, are interested in auto insurance coverage as both business and personal consumers of insurance products. We count in our membership business people involved in the industry as insurance brokers, agents and adjusters, as well as lawyers, medical practitioners and rehabilitation specialists.

We've had considerable member feedback on the issue of auto insurance which is regularly received by my colleague's department, the member services department. They handle unsolicited comments from members on a fairly frequent basis. The types of comments we're getting are that members are concerned about the high auto insurance premiums they pay and they're especially incensed about the double-digit rate increases that they've had to shoulder in recent years.

Certainly for businesses, operating a vehicle or often a fleet of vehicles is a necessity, so the mandatory auto insurance costs take on the characteristics of a tax, and I would say a hated tax because they're high and they're unavoidable. The 5% provincial sales tax placed on auto insurance by the former government added insult to injury because it too could not be easily avoided.

CFIB members in the insurance brokerage industry are disturbed about the lack of price stability in the industry which tends to put them on the receiving end of clients' wrath over repeated double-digit increases, this usually in the face of unblemished driving records. There are also individuals who are so-called higher-risk types, who have been thrown into the Facility Association owing to a series of small mishaps. In this case premiums skyrocket, and of course the brokers are caught in the middle. We also have lawyer members who are obviously concerned about the business side of their practices but also disturbed about the reduced scope for individual indemnity inherent in a modified no-fault plan. For all of these reasons, we're pleased that the government has resolved to review and revamp the auto insurance legislation in the province.

CFIB members determine direction for our organization on the basis of their majority votes on public policy issues. We operate on a one member, one vote principle. Some 64% of our Ontario members oppose the concept of publicly owned and operated car insurance. Of course when we read media reports suggesting that Mr Sampson had said that if this third overhaul in six years does not rein in premiums, public auto insurance may be the government's only remaining option, that gave us a certain amount of heartburn.

I would also point out—

Ms Lankin: It's a source of amusement for me, Judith.

Mr Sampson: See what happens when you meet with Peter Kormos just once.

Ms Andrew: Maybe Mr Sampson was misquoted.

Ms Lankin: You are being too generous.

Ms Andrew: In any case, CFIB would certainly point to the other publicly run insurance system in this province, the Workers' Compensation Board with its second-highest premiums in the country and its \$11.4 billion unfunded liability, as a prime example of publicly run no-fault insurance gone awry.

I would just like to review briefly our members' goals for auto insurance. Our members are looking for fair and certain levels of compensation for loss of income to victims. They want fast and efficient payments, reasonable legal and administration costs, affordable premiums, accountability for drivers' actions, some elements of choice related to individual circumstances and fair treatment of smaller businesses. What we've done is review the draft legislation in light of these goals.

Under tort provisions for economic loss, I would point out that CFIB was critical of Bill 164 for banning legal action for injured persons whose economic prospects were adversely affected beyond the structured benefits. Accordingly, we feel that access to tort will be important to small business owner-managers who sustain economic losses requiring indemnification beyond the available benefits.

Of course, the question in all of this, and it has obviously been the subject of some controversy within the insurance industry, is how expensive is this piece of the auto insurance plan. One would certainly expect that this would mean a significant increase in the number of lawsuits plus the administration around them. We believe that actuarial costings are needed to measure the impact of this element of the plan.

1410

Turning to tort provisions for non-economic loss, we've noted that the government is proposing to raise the deductible to \$15,000 and we assume that the increased deductible is intended to discourage minor claims, and again how effective this will be remains to be costed and of course later proven.

Under accident benefits, we were disturbed when Bill 164 introduced significant parallels between the auto insurance benefits structure and entitlement rules with those of the Workers' Compensation Board. In our brief on that legislation we predicted that the high replacement ratio at 90% of net income plus the lax entitlement rules would give rise to significant excess costs, especially when unemployment rolls are high. Unhappily, this seems to have been proven correct. It has certainly put pressure on premiums.

The proposal to reduce income replacement benefits to 85% of net income plus the reduced ceiling of \$400 per week after collateral benefits, the elimination of expensive indexing and expensive partial disability benefits and the adoption of an "any occupation" rule for continuation of benefits after two years represent together major reductions in the basic benefit which should translate into significantly reduced loss costs to insurers.

Theoretically, since auto insurance pays last after other sources of benefits, it makes sense for the basic plan to be a modest one; otherwise many insureds end up overpaying in auto insurance for coverage they already have under their employer or individual disability policies and it is that coverage that is called upon first to meet their

needs. We would be concerned if auto insurers started to look at the availability of collateral benefits and refused to insure or charged higher premiums to insureds lacking top-of-the-line employer or individual disability policies. This would be the case in some small businesses so this would be a potential concern.

Looking at the income replacement benefit for self-employed persons, we see that it is to be based on the last 52 weeks or the last fiscal year prior to the date of the accident. We're concerned about the possibility that that particular time frame may not be representative and we would argue for flexibility to average prior years. We believe the calculation of income from self-employment is fairly straightforward and we also support the provision which allows insurers and self-employed persons to agree on the person's self-employment income in advance so as to eliminate unpleasant surprises just when the insurance is needed.

In the optional accident benefits arena, we believe it's sensible to offer an array of optional benefits that people can choose depending on their circumstances and other coverages they may have. Obviously insurance brokers will be called upon to explain to a much greater extent what these options are and the need for them, but we take the view that consumers are mature enough to make responsible insurance choices provided they have the pertinent information.

I'd just move down now to the overall impact on premiums. We were surprised to learn that the government has not commissioned its own actuarial work on the proposed auto insurance package. It's our understanding that the Insurance Bureau of Canada's costings will be reviewed by peers in the field and this would be the extent of the effort. While we understand that engaging actuaries is a costly endeavour, we would argue that in this case it's well worth the outlay of tax dollars. We believe the government's responsibility to auto policyholders in Ontario is to ensure that this fourth, and hopefully final, auto insurance plan in the province, at least for a while, meets all of the necessary criteria, including those that we identified as important to small business.

I would just say as a sidebar that looking at the insurance bureau's costings and their trend line of an increase of 7% to 8% is fairly disturbing, which would argue for going back and costing each piece of this plan and looking at the overall impact and making decisions with that full information.

The government has not put open for debate the issue of the 5% provincial sales tax on auto insurance premiums, but we would like to note that this a major bone of contention and has been since it was introduced. We would suggest that there be some investigation into blending it with the 3% premium tax, which would reduce administration costs for brokers, insurers and the government and put a better face on the whole area for consumers.

In conclusion, I'd like to say that small and medium-sized businesses are looking forward to this fourth plan in six years actually meeting their needs in a competitive environment which delivers fair, efficient and affordable auto insurance coverage.

We'd be pleased to attempt to answer your questions.

The Chair: I don't believe we have time for questions. Oh, I'm sorry. My watch is difficult to read sometimes. **Ms Lankin:** We noticed.

Ms Andrew: It looks like seven minutes.

The Chair: You caught me once this morning. We can have perhaps a two-minute round of questions.

Ms Andrew: We did start just at 2.

Mr Sampson: Can I just speak to the tax issue? I'm not exactly sure how the blending of the two solves some administrative issues. I heard that through the first round of discussions at negotiations we had on this package, but it wasn't quite clear to me how blending the 3% and the 4% will save administration other than just frankly hide the two taxes. Maybe you can help me out as to how that might improve efficiencies.

Ms Andrew: Our first option is to eliminate it altogether. The fact that it has to appear on all the invoices and consumers pay it and the insurance broker is responsible for collecting it and remitting through to the insurer—that adds a separate step. It just seems unwise to have two taxes levied two different ways. This is a suggestion that we heard coming out of the insurance industry and it seems to be a sensible one, but if it's not feasible, obviously—

Mr Sampson: The other comment I have is I would agree with you the 7% and 8% is somewhat disturbing, although I'm not exactly sure we should go through a full costing until we know what we're finally costing. I'd hate to go through three or four or five rounds of costing or actuarial studies, because each one of those is quite expensive. We felt it was important, as a government, to hold back on that until we knew what it was we were doing an actuarial study on.

Secondly, quite frankly, it's the industry who will be selling this product. I wanted to hear from them where they felt it was coming on the cost side.

Ms Andrew: I think our members have a healthy scepticism vis-à-vis the insurance industry just as they do vis-à-vis the banks and so forth, so in terms of fashioning this plan, they would have more confidence if the government commissioned some actuarial work. I know in terms of Bill 164 there was work done by the Wyatt Co and by William Mercer Ltd, so there are firms out there other than the ones that the insurance bureau—

Mr Sampson: They were the ones who said we'd have 4% increase too, and look where we are now.

Ms Andrew: I think the Wyatt Co predicted a much higher increase over Bill 164, and they were right.

Mr Kwinter: Thank you very much for your presentation. I have a couple of questions. One has to do with your comment about if the 7% to 8% premium increase is there it's disturbing. That does not factor in the fact that the government may be moving to a contingency plan for the legal profession plus cutting back on the health care transfer, so that the insurance industry is going to have to pick up a portion of what was once covered by OHIP, which means that we're looking at a number that is yet to be determined. But that will be added on, plus on top of that you get your 3% and your 5% sales tax, so when it grosses up there's a good chance you're going to be into double-digit premium increases. What is your reaction to that?

Ms Andrew: Yes. Maybe it's unrealistic to think that we could hold the increases to a more modest level. Certainly people's incomes are not increasing at 7% to 8% a year, much less the 11%, 13%, 15% that you're suggesting, so I think we need to look at each piece of the plan, cost it and make a determination about what kind of auto insurance package we need here in the province and what it's going to cost. Colleen can add to this, but we're certainly hearing expressions from our members about their concern with the existing level of premiums and the kinds of increases, and if this is only the beginning, it could be very difficult.

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Mr Kwinter: One last question: You're supporting access to tort, yet in your material you show a ballot that shows that 63% of your people support no-fault, which is no tort. How do you reconcile that?

Ms Andrew: We felt that the former government got it wrong in terms of adding access to tort for non-economic loss. That someone has actually lost income or been unable to run a business or whatever and then been restricted to a fairly modest benefit is a very difficult situation to be in, whereas non-economic loss is more difficult, less provable and so forth. So I think the issue is to have a blended system that has some elements of tort but also a basic no-fault benefit that will cover in many instances.

Ms Lankin: I have a couple of comments, Judith. In respect to your last answer, the result of the ballot was very clear from your membership in terms of total no-fault, though. They're not looking for a blended system. Now, granted, that was at a point—

Ms Andrew: It's fairly old, actually.

Ms Lankin: It is, 1986. But I think what it's reflective of is what was happening in the late 1980s with insurance premiums at that point in time and how quickly they were escalating. Quite frankly, at that time everyone would have told you the reason was because of the tort system. The proposal before us has some major limits on tort, but that's part of what's being debated and I think you'll need to get your membership to take a look at that.

A couple of other comments: On the tax on premiums, irrespective of what the government does on that, and Monte mentioned this, there is a very real expectation that they're going to reintroduce the health care tax. A few years ago it existed, before OMPP. It was eliminated under OMPP and it was retained as eliminated under 164. I think it was 2% at that point. There's every expectation that's going to be reintroduced. That's a new tax which the insurance industry has said quite frankly is not included in any of its actuarial studies of the 7% increase. So you can take that, in the first year at least, to 9%. It may not be an escalation, but it will be there, it will be passed on. You can be sure of that and we've heard that from the industry.

Ms Andrew: Are you speaking of the fair share health levy?

Ms Lankin: I'm talking about insurance. I'm not talking about the Common Sense Revolution. It will be passed on to the consumer.

The other thing I wanted to point out to you is that you said that you were concerned about companies being able to take a look at collateral benefits etc. Again, we've heard very specifically this morning from one of the insurance companies that was here that this is an essential that they need to have in order to bring the rates down. They want to be able to rate risk against what your other benefit plans are. I tend to agree with your position on this, but you should know that's out there and there's pressure coming from the insurance industry on that.

Ms Andrew: Oh yes, I know.

Ms Lankin: I guess one of the things that I'm still concerned about is that while I recognize the arguments that you've put forward, in fact all of the costing that's being done and the actuarial studies that have been done say that premiums are going to continue to increase and it's because of the medical rehabilitation costs. In fact, your analysis around 164, if you look at State Farm's presentation and others, is not quite right, because the wage costs and other things have levelled off. It is the medical rehab section.

It seems to me that's what we need to be getting at, as opposed to just slashing benefits. Maybe there's a difference in approach in the way we would look at this, but do you have any suggestions of what controls need to be put in place around the medical rehab side of things? Because it seems that's the largest cost driver, yet that's also, if not taken care of in terms of appropriate benefits, the thing that spills over into the regular OHIP health care system and drives up costs there, which puts pressure on government deficits and taxes, which your membership is also concerned about.

Ms Andrew: There's a lot here. First of all, I just would like to say that our vote on no-fault auto insurance was—the stark question was put, although in Ontario there was never a question of having an absolutely pure no-fault system. Even the OMPP had the threshold access and so forth, so what we've said is not inconsistent.

On the issue of medical benefits and controlling them, obviously that's not our area of expertise but we do know that insurers will say, actuaries will tell you that the level of benefit does play into the duration of the claim. The more generous the benefit is, the more easily it is accessed and continued, the longer the disability experience. People stay on claim longer. This happens especially in high unemployment periods. So the benefits do have an impact on the medical end of it.

In terms of the adequacy of the caps that are being proposed by the government in the medical area, that's not our area of expertise. I'm not sure what is appropriate in terms of controlling that area, but if that's being identified as the area that's the runaway one, we need to have a plan that provides people with the medical treatment and rehabilitation that they need but no more than they need. They shouldn't have treatments that aren't necessary. There should be basic treatments offered that will do the job—no more and no less.

The Chair: Thank you very much, Ms Andrew and Ms Ladd, for your presentations today. We appreciate the Canadian Federation of Independent Business's input.

GENERAL ACCIDENT ASSURANCE CO OF CANADA

The Chair: Our next presenter is the General Accident Assurance Co of Canada; Mr Ted Scott, senior vice-president of underwriting. Welcome to the committee.

Mr Ted Scott: I'd like to thank the members of this hearing for providing General Accident Assurance Co with the opportunity to state our views on the proposed legislative changes involving the Insurance Act and accident benefit regulations.

Before I get into the points I would like to cover on behalf of General Accident, I would like to take the opportunity to express appreciation for the efforts that Mr Sampson and his staff have put into the development of the proposed changes. I'm sure there will be many critiques of the changes, as comments have been made already today, but it is obvious that considerable thought and energy has gone into the development of the proposed automobile product. In our opinion, the proposal goes a very long way in meeting the self-imposed mandates of the government with respect to providing fairness, entitlement and rate stability to the consumer. We are hopeful that, once the hearing process has been completed, the government will move quickly to institute the necessary reforms which will allow these very necessary changes to begin effectively working for insureds.

In order to ensure that the product is provided in the best form possible and supported effectively, we would like to take this opportunity to express the following points for the consideration of this hearing.

(1) Assessment of health care costs: While it comes as no surprise that the government has a very real concern for providing health care costs in an automobile environment, the proposed change merely transfers this cost from one source to another. In our view, this change does nothing to enhance protection or increase fairness for the insurance consumer. On the contrary, by setting up an additional infrastructure that any form of assessment will require, additional administration costs will be incurred, which will ultimately result in increased insurance premiums. If it is the intention of the government to move forward on this issue, we would suggest that any contemplated change should be made in such a way as to minimize administration costs while fully disclosing the impact of the increased costs to the insurance consumer.

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(2) The file and use option, as contained in the material and the recommendation on change: We feel that the inclusion of this option represents a positive move which will hopefully streamline the rate approval process in future. We do have a concern that the option will be truly applicable only in very limited circumstances due to the apparent continuing powers of the Ontario Insurance Commission. The proposed change indicates that the commissioner will continue to have responsibility for the approval of changes to risk classifications, coverages, and categories.

If it is the intention of the legislation to limit the scope of programs to a very narrow differentiation band, many benefits to the consumer could quite possibly be lost. Allowing and even encouraging variety in the programs

offered by insurance companies would result in consumers having the opportunity to access a product and a program that best suit their needs rather than being forced into a classification and/or category designed to address a majority approach.

(3) Catastrophic Impairment: The draft accident benefits regulation provides a definition of "catastrophic impairment" which includes a clause (f) which reads as follows: "Any other impairment or combination of impairments similar in severity to the impairments described in clauses (a), (b), (c), (d) or (e)." Our concern here lies in the reference to "combination of impairments." We feel that this reference is far too general and would allow proceedings to take place on cases which truly would not justify the term "catastrophic." We recommend that this clause be removed from the wording.

(4) Underwriting criteria: The issue of what is acceptable underwriting information has not been specifically addressed in any of the proposed changes. Under the present system of Bill 164, insurers' access to pertinent underwriting information is severely limited, with the result that many consumers have been disadvantaged in their search for a fair premium.

Due to the collateral source rules, many individuals injured in an accident are indemnified in large part by programs other than auto insurance. Because insurers are barred from obtaining details on collateral programs, rate structures, by necessity, tend to be developed on more or less a worse-case basis. The result is, many consumers are probably paying more than they should for specific coverages.

Some insurers have found a solution to this by taking a group approach to insurance marketing. By selling to groups that have some sort of collateral benefit, rates can be set at a very competitive level. This certainly benefits the individual consumer who is part of that group, but hardly provides a level playing field either from a business standpoint or for consumers unable to access such a program.

By eliminating restrictions on underwriting information which is indeed pertinent to individual risks, consumers would have a much better opportunity to, firstly, buy the cover that they need and, secondly, pay a fair price for that coverage. We recommend that the current restrictions on information be amended or eliminated in order to allow companies access to details which are pertinent to acceptance and pricing of an individual risk.

(5) The residual market, specifically the take-all-comers rule: Because of the inequities of Bill 164, as well as the limited capability of making a profit under the program, an artificial approach to the residual market has been taken by way of introducing a take—all-comers rule. While the concept behind this rule is reasonable—that is, all consumers should have access to insurance coverage—its implementation has had a truly disabling effect on many consumers' ability to find coverage at a reasonable price. The take-all-comers rule imposes an artificial structure on the market which is very difficult to work with, particularly in a market where profits are minimal or non-existent.

Companies trying to control their bottom line tend to look for ways to reduce their exposure to marginal or

poor risks. By introducing a fair and balanced program, which this legislation contemplates, the ability of insurers to make a reasonable return on their business is enhanced, and this should automatically mean a greater willingness to accept what is currently termed as "facility" business into the regular market stream. Furthermore, if the previously mentioned issues surrounding file and use are considered, we feel individual insurers will develop programs to address and attract marginal and possibly even poor risks to their account. As a result, we would recommend that, in concert with the introduction of the new legislation, the take-all-comers rule be eliminated.

(6) Over the past few years, there have been a number of initiatives commenced by both government and industry to combat insurance fraud and heighten awareness of this costly problem to consumers. Estimates of the cost of fraud and misrepresentation have ranged from 10% to 20% of the total claims-paid amount, a truly staggering sum. This is a cost which is passed to all consumers, and every opportunity we have to control and reduce fraud must be acted upon.

Current and past legislation have required insurance companies to make payments in situations where it is apparent fraud or misrepresentation exist and then attempt to recover amounts paid after formal hearings or arbitrations have deemed those payments to be inappropriate. This approach represents a means of protecting the rights of the innocent consumer but does little to control fraud or reduce costs. In the proposed legislation, there are a number of areas where allowing insurance companies to stop or limit payments before the hearing process would significantly reduce these costs. We believe this initiative should be part of the final product. At the same time, the Insurance Commission should be given appropriate power to take quick and corrective action on any company which abuses this process.

Mr Chairman, I would like to thank you again for giving us the opportunity to address this hearing. We do look forward to the final development of the new product and the benefits it will bring to the insurance-buying consumers of Ontario.

Mr Crozier: Thank you for your submission. I note that you say, in your opinion, this proposal goes a long way to meeting the mandates of the government. In fact, as we go through your proposal, I'm sure that not only will you like what they've done so far, you'll be ecstatic if we can implement all your recommendations.

But the problem that we're facing is, after only a day and a half, it's become very evident that the problem with the government's proposal is that expected increases in the next years and the foreseeable future are too high. The public perceives insurance rates to be too high now, and any increase in those rates, I'm afraid, is going to be a problem with the public. What we need, I think, are suggestions on how we might take the government's proposal and even make it so that premiums can be reduced. That may be a bit much to go after, but at least not escalate. What about suggestions like returning to the tort for economic loss, of having a threshold that would minimize or reduce the access to tort?

Mr Scott: It possibly could, Mr Crozier. We haven't costed it. We haven't applied an actuarial analysis to that

specific situation, so I can only speak from off the top of my head. I think there probably are ways to control the cost of tort by limiting access to it or changing the deductible in some fashion. Part of my presentation deals with the issue of fraud, and frankly, I think that is a huge opportunity to reduce costs and pass those through to the consumer.

Mr Crozier: Has General Accident costed the government plan?

Mr Scott: No, we have not. And I have personally not had the opportunity to go through the actuarial costing prepared by Mr Miller. We do have staff on the technical committee that works with the IBC on various aspects of the changes and so on, but I really can't speak to the projected costing that's been put on the table.

Mr Silipo: You make the point, in arguing for in effect having better access to details on what kind of coverage people might need, that in fact under the present situation what we have are rate structures that tend to be done on a worst-case basis and therefore, to quote your words, "resulting in many consumers probably paying more than they should for specific coverages."

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Why is it then that under this proposed system, which results in fewer benefits as the basic package, we are not seeing offhand and right from the start an indication that rates would actually drop for people who would be buying into that basic package, while they may stay the same or increase indeed for people who might be then purchasing those additional options? That, quite frankly, is something that continues to puzzle me and I think, to be quite frank with you, where I think the insurance industry is at a real problem in convincing not just me but many people in the public that what we've got in front of us is something that's more useful than the present system with all the problems that we know exist in the present system.

Mr Scott: In answer to your question, again I can probably only give you at best a partial answer because I haven't been involved in the costing of the product. But I would say that certainly on the accident benefits portion of the cover, particularly as it applies to weekly indemnity, I would suppose that the projected cost is significantly lower under this proposal than it was under the current Bill 164 system. But some of those costs transferred to other areas such as the tort piece of the cover, because that portion of the coverage has become somewhat more enriched than it is under the current system.

The exact percentages and the transfer of loss costs, I really can't speak to specifically. I guess the point I'm trying to make in my submission is that there's no doubt that there are parties who have been injured in an accident, where the auto insurance does little to provide anything to bring that person back into the workforce. From a personal standpoint, I guess more than anything else, I feel that's not really a fair and equitable approach, and I think it can be adjusted or addressed in certain fashions by changing some of the insurance scheme as it exists today.

Mr Wettlaufer: Ted, having been a broker, I can attest to the amount of fraud not just in the claims end but in the number of people who would come into the

office, sit across from the broker's desk and out and out lie about what their driving records were. Do you have any way of knowing the increased cost to administration for your company or for the industry for such a thing?

Mr Scott: It's very difficult to put a firm number on it. I can speak to our operation, or our company, where we have hired a total of 10 people who work in our claims department and address, and only address, the issue of claims fraud. You could take those salaries, I guess, and say that is a specific cost to our company to try and control fraud in one fashion. Frankly, 10 people are far too few. We are only touching the tip of the iceberg, so to speak.

Mr Wettlaufer: What about the client who comes in and gives improper driving record information to the broker beforehand; ie, would access by the broker or by your company to an immediate online driving record system cut your costs?

Mr Scott: It probably would. By how much, it's very difficult to say, because we do access claims information pools and so on. What it would do would be to introduce efficiencies into the system that don't exist today, if that access were at the front end and many of those issues or questionable pieces of information were addressed and answered at that point.

The Chair: Thank you, Mr Scott and General Accident Assurance, for sharing this information with us.

PHYSIOTHERAPY ACTIVE TREATMENT TOWARDS HEALTH

The Chair: We now have an organization by the name of PATH to present to us. It's the Physiotherapy Active Treatment Towards Health. Welcome.

Ms Judy Gelman: Hi. I'm Judy Gelman. This is Toulia Reppas. We are co-chairmen of a group called PATH. PATH stands for Physiotherapy Active Treatment Towards Health. We are both physiotherapists. If we were nice today, I guess we'd say that we could all have a physiotherapy break and a stretch now after you've been sitting all day. Would you like that? So, everybody. Sorry, but we do have kind of a full thing we'd like to speak to you about.

Before we begin to discuss the issues at hand, I'd like to thank the committee, and particularly Mr Sampson, for providing us with the opportunity to voice our views. We feel that this consultation process is valuable in terms of developing an auto insurance policy which meets both the objectives of the government and the needs of the consumer. We hope the suggestions that we provide you with will be acted upon in accordance with your promise to make necessary amendments to improve the legislation.

As I've discussed now, PATH represents 65 physiotherapy-owned clinics across Ontario. A high percentage of our clients are motor vehicle accident victims. It is for that reason that we wish to have some input into this new insurance legislation.

Having reviewed the draft auto legislation materials which have been circulated to us, our organization has reached the conclusion that the proposed legislation will not be advantageous to accident victims, the government or to physiotherapists. In particular, we are concerned

with the procedures for claiming benefits outlined on page 4 of the summary chart of the draft auto insurance legislation. We believe very strongly that the proposed legislation will limit and in some cases prevent accident victims from having the physiotherapy care they require. Also, I will discuss how the new automobile insurance plan will end up costing taxpayers more money through increased numbers of physiotherapy treatments charged to OHIP.

Under the new legislation, a physiotherapist must submit a treatment plan to the insurer and have it approved before treatment can begin. This raises two problems. First, the client's access to rehabilitation is often delayed and it is subject to the whims of the insurer. One of the tenets of our organization and the profession of physiotherapy in general is that early intervention improves the rate of recovery and the extent of recovery of patients.

In my professional career I have encountered numerous patients who have not gotten treatment early enough and have suffered injuries that have become permanent. Sometimes their muscles or ligaments heal in shortened or weakened conditions and they often become chronic and become a real burden. Treatment during the initial stages of injury to reduce pain, encourage active motion and educate the patient are imperative to prevent complications from occurring. Also, this early stage of rehabilitation can focus the patients' goals and encourage involvement and commitment to recovery.

These advantages of early treatment are in danger of being stripped from patients under the new legislation, where they will have to wait until an insurance company gets around to approving their treatment plan. The legislation also creates a conflict of interest for the insurers. They will be placed in a very strong economic position if they are responsible for both the approval of treatment plans and the payment for these. PATH is very concerned that an increasing number of patients may be denied treatment in order to bolster insurance companies' bottom lines.

Further to this argument is the question of the logic in placing accident victims' medical wellbeing in the hands of insurance company employees who have little or no medical knowledge upon which to base a decision of whether or not a patient should receive treatment, and what kind of treatment they need. If a qualified physiotherapist recommends treatment because he or she determines that it is medically advisable, that decision should be respected.

Under the RHPA, physiotherapists are currently allowed by law to assess and treat patients at their discretion. As regulated professionals, we are bound by the rules, regulations and code of conduct of our college. The college is very diligent in enforcing and monitoring these to ensure that the highest standards are being maintained. We do not believe the government consciously wishes to challenge the integrity of physiotherapists by forcing the approval of treatments to be regulated by insurance companies. We are trained experts in the field of rehabilitation and therefore we submit that we do not require insurance companies to tell us how to best treat our patients.

Also, many independent physiotherapists would not be able to absorb the time and the costs of a full assessment and preparing a treatment plan, as well as possibly paying staff, without knowing if their costs would be covered. This is what we would be submitted to under the proposed legislation.

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The next issue I'd like to deal with is the government's proposal to send patients to an independent centre for assessment after only six weeks of physiotherapy. This makes neither economic nor medical sense.

It is a medical fact that even mild to moderate musculoskeletal injuries can often take at least 12 to 16 weeks to heal. More severe injuries such as fractures, multiple injuries and those requiring surgery can often take months to resolve. Research has proven that within 12 to 14 weeks, 75% of patients return to work after active rehabilitative therapy.

If you want to just have a glance at the Canadian Underwriter magazine just published, February 1996, there are our PATH results of this. I have provided each of you with a copy of it. There are also some other results there with time lines for the healing of soft tissue injuries.

It is inadvisable to send patients who are only six weeks into their rehabilitation and not yet healed to an independent centre for assessment. The cost of rehabilitation treatments for eight to 10 more weeks, enough time to return 75% of these patients to their pre-accident level, will often cost less than a DAC type of assessment, which costs upwards of \$1,500. Therefore, in 75% of the cases, these DAC assessments will be totally unnecessary. The patients' treatments are interrupted, money is spent unnecessarily, patients' injuries may be exacerbated and everyone loses. It is extremely wasteful to spend money on assessments and not on treatment.

If the patients are not allowed to heal fully and return to full function as soon as possible, they will remain a burden to the system and thus in the long run the insurers and the public will be paying more for these premature assessments. A delay in rehabilitation can cause the patient to deteriorate or plateau, thus causing even further delay in their return to full function.

If the DAC assessment finds that the client is not to return for further treatment, which they often do, many patients still in pain or too weak to return to full function or work, especially if they've only had six weeks of treatment, will turn to OHIP clinics for treatment. This will cause the OHIP clinic waiting lists, which are now 46 weeks or more, to grow, which will result in pressure being placed on the government to add resources to the OHIP clinics. This scenario has occurred in all of our clinics many times. In effect, this allows insurance companies a release from their obligations and the public will end up paying for the remaining physiotherapy treatments.

In a letter from Mr Sampson to ourselves—sorry, Mr Sampson—he wrote that, "Consistent with the government's fiscal objectives, these proposals will not shift costs to the public sector." If in fact this government's proposed legislation is passed without amendments, unfortunately this is exactly what will occur.

In his communication to us, Mr Sampson also stated that the proposed new legislation will be fairer, simpler and more cost-effective. Our question is, for whom is this true? How is the legislation fairer when patients who are in need of physiotherapy could be potentially denied or cut off too early? How does the legislation create a simpler system when it adds two more levels of bureaucracy to providing patients access to physio services? How does the legislation make physiotherapy more cost-effective when it is the taxpayer who will end up bearing the brunt of the extra burden on OHIP-funded clinics?

Clearly, the new legislation is flawed and needs to be revised to prevent the negative effects I have just discussed. At this point I'd like to summarize PATH's original proposals to you.

(1) Regulated health professionals, ie, those professionals who are regulated and in good standing with a professional college, be allowed, as they're entitled by law, to assess and begin treatment of injured patients. Within two days a full assessment and treatment plan should be sent to the insurer and the physicians of the patient.

(2) Patients should be able to receive at least 12 weeks of active physiotherapy treatment to allow them to heal, covered by the motor vehicle insurance before an independent assessment be allowed.

(3) If after this three-month period a patient is not progressing, ie, almost back to full function unless there are very unusual circumstances, then a DAC type of assessment should be allowed.

(4) Treatment should, however, not be disrupted while a patient is waiting for this independent assessment and report, as they will only plateau and regress, which puts them at greater risk for not returning to function and work.

We ask that the committee examine our proposals carefully. They are based upon fact and years of medical rehabilitation experience. Our research documents support our proposals. Implementing our suggestions will prevent taxpayers from picking up extra OHIP physiotherapy costs, as well as provide better and more immediate treatment to patients who will be able to return to active, productive lives in the quickest possible time.

Again, I would like to thank the committee for providing our association with the opportunity to present our suggestions in this public hearing and hope that you will be open to our suggestions.

Ms Lankin: I think your presentation is very straightforward. Your recommendations accord with some that we've heard from other health professionals and I really don't have any questions. I understand it and I appreciate your presentation. Thank you.

Mr Spina: Thank you for a good presentation; it was rounded. I wondered what your view of treatment plans would be as a way of balancing the need maybe to control costs with the need to provide proper treatment. Is there another or better way that you can suggest maybe to do this?

Ms Gelman: Our suggestion is that, as professionals who are under RHPA and who are not-for-profit referral, usually we're hoping that the treatment plan would be provided by a professional who has had years of experi-

ence and would be trying to do it as inexpensively as possible and as quickly as possible.

If you're talking about later on down the road—it's been proven by very much research that if you assess a patient too early, very often it's very hard to tell, to see if they've had good treatment. When you come to three months down the road, if they're not resolving properly, then yes, it's time to look at something a little bit more drastic and there are many different ways of doing that. You can have an IME or you can have the DAC assessments.

I'm not sure if that's exactly what your question is. You meant from the very beginning?

When we do assessments, we examine a patient fully. We do a physical assessment, plus we do all the other kinds of assessments we have to do as far as social, economical and all that and then we base our treatment plan on that. If a patient's mild, then we put them in a very quick track program. If they're moderate or more severe, we put them in a different program.

Mr Spina: You would like the opportunity to be able to make that decision as opposed to the insurer, I gather.

Ms Gelman: Rather, as I've spent many years having practised doing it, went to university to do it and I am also under my college which tells us certain protocols we have to follow. Obviously somebody who's just—and I don't mean this meanly, but you wouldn't like the newspaper boy across the hall to tell you whether you can go in here and listen to the—even though he pays his taxes. You have to have some experience behind you and you have to be responsive to experience.

Ms Castrilli: The Ontario Chiropractic Association was before us earlier and it pointed out a provision of the legislation that it feels should be changed. For instance, where the insurer disputes any of the services that are provided and the matter is referred to a DAC, they would like the cost in effect to be paid first and disputed later. Is that your position as well?

Ms Gelman: They'd like the cost of DAC assessment?

Ms Castrilli: Yes, of the treatment. The individual treatment can be disputed, as you know, and they would like the legislation changed in order to make sure that the costs, in this case the chiropractor, in your case your members, would be paid first and then disputed later.

Ms Gelman: Obviously, if you think about it, many of our clinics are small, individual clinic owners—physiotherapists own their own clinics—and for them to put out the time and the effort and not be paid is rather hurting in this economy. They have all their other expenses, so we feel that if they're providing the service and they feel as physiotherapists or chiropractors that the service is necessary, then yes—anything afterwards should not be paid, if the DAC decided that it wasn't necessary after, but up to that time of course we feel it should be paid when the service was rendered and it was rendered for good, honest reasons.

Ms Castrilli: You concur with that position then?

Ms Gelman: Yes, absolutely.

The Chair: Thank you very much and PATH for presenting today and sharing your information.

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INSURANCE CRIME PREVENTION BUREAU

The Chair: We now have the Insurance Crime Prevention Bureau to present to us, Mr Jean-Claude Cloutier. Welcome to the committee, sir.

Mr Jean-Claude Cloutier: My name is Jean-Claude Cloutier; I'm president of the Insurance Crime Prevention Bureau. Rick DeGraff is the Ontario division manager for the Insurance Crime Prevention Bureau, and Jim Adams is a special agent and investigator for the Insurance Crime Prevention Bureau in our Toronto office.

We have had the opportunity to review the proposed changes to the current insurance legislation and what I would like to do today, with your permission, is to address strictly the anti-fraud measures that you have proposed. We think there's a small step that is being taken towards controlling insurance fraud, but it is insufficient, in our view, to really control that cost.

In the submission we gave to Mr Sampson last summer, it had been estimated that approximately \$1.3 billion in losses were related to insurance fraud and about one third of this cost is Ontario's cost. Of course because of the loopholes which remain we feel that the fraudsters will continue to milk the system at the expense of the honest insurance-buying public.

The three new offences created under the act are unduly burdened with the obligation to prove "knowingly" and "willingly" under the terms of these new offences, which makes it very difficult to come in and prove a case. If instead the wording were to say something like "causing an insurer to act on statements and representations as if they were genuine in connection with the entitlement to a benefit under a contract of insurance," then it would become a little easier to prove the wilful acts of these persons and let them then justify his or her actions.

Our understanding of the amended act is that it does not relieve an insurer from the obligation of immediately paying accident benefits to a claimant in cases where there are strong suspicions of fraud. What we had recommended and what we would like to see in this is that in cases where there are very strong suspicions of fraud, the insurer be allowed to suspend or withhold further payments, providing notification of this is given to the Ontario insurance commissioner's office, as well as to the insured, as to the reasons why these payments are being withheld. To do otherwise is to invite the money to disappear from the country, or at least from the province.

We suggested that insurers be mandated to report all losses to the Insurance Crime Prevention Bureau's central database to help prevent fraud. At a breakfast meeting Mr Sampson expressed some concerns with respect to the freedom of information act, but I would like to mention in this respect that the freedom of information act does not apply to private industry. It applies strictly to government institutions, and for this reason we feel it would be the right thing to do to mandate this reporting to the Insurance Crime Prevention Bureau.

Still, in reaction to the concerns about privacy, most of the property casualty insurance industry in Canada has adopted the Canadian Standard Association's model code

for the protection of personal information, as has the Insurance Crime Prevention Bureau, which clearly defines how information obtained is to be treated, who may access it and why, and thus provides some consumer privacy. This model code, in passing, is somewhat similar to law 68 in the province of Quebec.

We also note that nothing was provided in the amendments with respect to the creation of an auto theft prevention authority, as suggested on page 5 of our presentation to Mr Sampson. Considering the continuing increase in motor vehicle theft in Ontario and the parallel increase in fraudulent auto theft claims, we believe the time is appropriate for the government to step in and impose measures which will help contain and possibly reduce the costs of automobile insurance.

We understand that you're looking into some form of legislation dealing with the treatment given to salvage vehicles. The safety and peace of mind of the motoring public dictates that tangible action must be taken immediately, not only to rid our roads of the time bombs represented by improperly repaired vehicles but also to help reduce the number of vehicles stolen which are then sold to an unsuspecting public under the identity of a previously salvaged vehicle, or the obtention of insurance on a piece of junk which is then reported stolen.

When we made our verbal representation to Mr Sampson in August, we discussed the value of pre-inspection of motor vehicles from a fraud prevention point of view. Professors Hosios and Jump of the University of Toronto, in a paper prepared for the Canadian Coalition Against Insurance Fraud in 1995, which will be received by the coalition's board shortly, determined that if such a program were in place in Ontario, automobile insurers, hence Ontario insurance buyers, would save approximately \$20 million, as some 2,679 fewer vehicles would be reported stolen. Furthermore, this measure would prevent the insurance of damaged vehicles, which damages are then reported to the new insurers as a hit and run or a one-vehicle accident.

In this respect, you will find in our folders an article by the International Association of Auto Theft Investigators' president, Mr Crepeau, that gives all the benefits of such a program. To have any measure of success, such a program, we feel, must be government mandated. To rely on everybody's goodwill is to ask too much, I think, and we suggest that the government should promulgate this.

At the initial moments of my presentation, I forgot to indicate that the Insurance Crime Prevention Bureau is a non-profit organization. It has been in existence in one form or another since 1923. We operate across Canada, and Ontario is one of our biggest divisions. Thank you.

Mr Ford: How do we balance the costs of prevention and the costs of savings?

Mr Cloutier: It's a perennial question, and it's always very difficult to establish. But if we look, for instance, at pre-inspection of vehicles, what it has done in certain of the American states, it has more than paid the cost of doing this pre-inspection by keeping the theft of vehicles at a lower rate. Michigan, New York, New Jersey have all had that experience of reduced costs in so-called vehicle thefts, where vehicles didn't exist in reality or where

vehicles were claimed to have a \$3,000 or \$5,000 or \$10,000 stereo set when it didn't in fact have such a set.

Mr Ford: I realize that, but sometimes the cost of prevention costs more than the cure. But we still have to keep a sense of balance here; we just can't let it wander off by itself.

Mrs Marland: I'm wondering if you have suggestions about how we can actually reduce the theft claims. Is the key solution to be found in education, in vehicle design, or—and I don't want to mention "the famous," you know—in insurer discounts?

Mr Crozier: What's "the famous, you know"?

Mrs Marland: I'm not going to mention it, because I'm not going to give them a free commercial. Is it in insurer discounts for safety features or in some other approach that hasn't been researched or developed yet?

Mr Cloutier: It's a mix of everything, actually. It's a mix, definitely, of education of the public to take care of their vehicles, which oftentimes they do not.

Mrs Marland: Like not leaving it running with the keys in it.

Mr Cloutier: Correct, yes. I'm just going in to buy a paper or get a pack of smokes and the car is running outside. We have to educate the public. Some of the states, Michigan in particular, have passed legislation where, if your car is stolen with the keys in the vehicle, you automatically get a 10% penalty on the actual value of your vehicle. This is one way of saying: "Come on now, guys, wake up. Don't do it." It's a question of educating the public to the reality of this problem.

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Mr Sampson: Thank you for your presentation today. I want to assure you that on the med rehab side fraud component, we're trying to deal with the items you raised to tighten that up. Perhaps there's more tightening up we need to do to accommodate your concerns on the med rehab side as it relates to how to deal with a wreck and when a wreck should be delisted, and perhaps more important, taking the VIN number off—the VIN, vehicle identification number. I'm using phrases that—

Mrs Marland: You're getting like everybody else.

Mr Sampson: Scary, isn't it? Taking the vehicle identification number off the system. We are working on that and we're going to try to bring that as part of the final solution.

If we could follow a vehicle from birth to death, so to speak, in your view would that help with some of the fraud problems as related to repair work etc?

Mr Cloutier: It certainly would, particularly if the document that attests to the life of the vehicle were to be marked in a permanent manner that this is a salvaged vehicle, so that John Q. Public, when buying the vehicle and getting their kit from the motor vehicle registrar, would see, "This vehicle was in an accident, so I'd better check on that closely."

Ms Castrilli: Thank you very much. I'm grateful to you for the novel information you've provided this committee. I have one question with respect to the changes you recommend to subsection 447(2) of the act in your first paragraph. My concern is that you would change the civil standard of proof to a criminal standard of proof; in other words, if you're deemed to have told a

lie, it's a lie and that's that. I wonder what you would do in the case of someone who legitimately makes a mistake, as can happen, if you take away that requirement.

Mr Cloutier: If a person has made a legitimate mistake, that person would be able to explain that mistake away and would not have any more onerous requirements.

Ms Castrilli: How would that be, though? Your new wording would be "Causing an insurer to act on statements and representations as if they were genuine." As long as the insurer believes the statement that is in fact a lie, the individual is on the hook, regardless of whether it's an innocent mistake.

Mr Cloutier: I guess I've seen this from a criminal investigation point of view perhaps more than from a civil point of view, but if a person states, "I can't work any longer because my back is injured," and you see this person playing a hefty game of tennis, that person has lied outright and it's knowingly and willingly that he has done that. But if we have to try to prove that in that person's mind, he knowingly and willingly did commit this criminal act, it is a problem, as we see it.

Ms Castrilli: You prefer a system where the individual has to disprove as opposed to the insurance having to prove. Is that it?

Mr Cloutier: Yes and no.

Mr Crozier: Thank you, sir. Just a couple of items on the practical side of your work. When you talk about pre-inspection, I recall in my broker days where, if I insured a commercial property or an individual residence, we were required to submit pictures with the application for insurance, pictures of the home, let's say. I suppose it could be as simple as that, could it not, where if we were to insure an automobile, the broker would simply take a couple of side views and a front and rear view of the vehicle and have that with the application as evidence that the vehicle was in whatever shape at the time?

Mr Cloutier: It would be a start, but we feel it's not just the pictures that are important here; it's the identity of the vehicle. Unless the broker is really well-honed into looking into the vehicle identification number and the safety sticker and other such matters, it would perhaps not be a good thing to impose that on a broker.

Mr Crozier: So what you're suggesting goes a bit beyond that, and the more we do, the better we can be assured that there would be less fraud.

Mr Cloutier: That's correct.

Mr Crozier: I suppose it would be too much to go as far as having almost like a log book with an automobile, where service would have to be indicated, accidents, damage, that sort of thing. That'd be going a little bit too far, I suppose?

Mr Cloutier: I wouldn't even dream of that at this present time.

Mr Silipo: Thanks very much for the presentation. You gave some figures in your presentation about the extent of the loss that comes as a result of fraud. Could you break that down a little more for us in terms of where you see the major problem being? Is it in the area, as you pointed out in your letter to Mr Sampson, of people staging accidents or double-dipping? Is that where the bulk of it is? It's important for us to get your sense of that.

Mr Cloutier: Presently, I think the bulk of the fraud is in staging accidents where none exists, but you also have the false vehicle thefts and the arson cases as well, the false burglary cases. But presently, the trend seems to be on fake bodily injury claims.

Mr Silipo: Do you have some sense that this has increased if you were to look back over the last five years? Your comments attribute some of that to Bill 164, and I just want to be clear. Are there some things under Bill 164 that, as you see it, have increased that from before or was that something that was there before and now we're just noticing it more? What is going on?

Mr Cloutier: With Bill 164 and the rich indemnities that were given to the people, we attracted in Ontario a lot of people from other provinces who came here with the express intent to collect up to \$1,000 in indemnity for fake bodily injuries.

Mr Silipo: So you're saying it's because of the additional benefits that are available. When you look back to the pre-164 days, though, do you see the bulk of the fraud being in other areas? If we went from a tort system to a non-tort system, one would expect that the categories of where the fraud might be would inevitably shift. Do you have some indications on that?

Mr Cloutier: We don't have real hard indications on that, no, but all of a sudden we saw the explosion in bodily injury claims after 164 came into being, which we had not seen previously. We were involved in some investigation involving rings of fake bodily injuries.

Mr Silipo: But if the bulk of the fraud is in these staged accidents and the double-dipping, there's nothing to say you couldn't deal with that problem and still leave the bulk of the benefit levels there for the honest consumers. You're not making the argument that you need to remove those benefits as a way to deal with fraud. You're saying deal with the fraud provisions.

Mr Cloutier: What we're saying is that the richer you make the benefits, the more you will attract people to come and share in those rich benefits. This is what we're saying here.

Mr Silipo: That means basically, then, stripping things down to the bare minimum, so making everybody suffer as a way of diminishing the risk of those few who will defraud the system. It seems to me a pretty sad way to have to go.

Mr Cloutier: Or making it more difficult for people to present claims or less—

Mr Silipo: Absolutely. That's the point we continue to impress here. If there is a problem with fraud, and we're not arguing there isn't, let's deal with that, let's deal with the question of fraud. Let's not try to do that by stripping away basic rights and basic products that we think good consumers should have. We don't disagree at all with the points you're making about the need to deal with fraud.

The Chair: Thank you very much for presenting to the committee, Mr Cloutier. We appreciate your information.

Mr Spina: Point of order, Mr Chair.

The Chair: If you think it's necessary.

Mr Spina: This was included in all our presentations, and I just wondered if it was of some significance that we should be aware of.

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Mr Cloutier: I'm sorry, Mr Chair. I was to have kept a copy of the package that went to you so I could refer to it, and unfortunately I gave everything away. But, yes, this is strictly an example of a recent fraud that we were involved with that shows all the ramifications. Every person you see there claims to have been employed by the organization which is in the centre at the time when they had an accident and they produced a certificate of employment. Yet this is only a shell company. They never had any employees. This is to show you how they want to collect up to that \$1,000.

Mr Spina: So it was an organized fraud scheme.

Mr Cloutier: Yes, sir.

Mr Spina: Thank you. Sorry, Mr Chair.

ONTARIO PHYSIOTHERAPY ASSOCIATION

The Chair: We now have the Ontario Physiotherapy Association joining us. Welcome to the committee.

Ms Signe Holstein: My name is Signe Holstein, executive director of the Ontario Physiotherapy Association. I'm also educated as a physiotherapist. With me is Maureen Dwight, a registered physiotherapist with a large practice here in Toronto. She is a member of the accident benefits advisory committee under the current legislation. At Maureen's clinic, about 20% of the patients treated are MVA victims.

We appreciate this opportunity to appear before this committee and to have the opportunity to comment on the draft legislation and regulations. We compliment Mr Sampson and the government on taking this consultative approach. Quite frankly, as was the case with Bill 26, we wish we had more time to study the proposals and consult with our members, who are on the front line in treating MVA victims. However, we've done our best in the very limited time available to us.

Next to physicians, Ontario physiotherapists assess and treat more motor vehicle accident victims than any other health care profession. We think, therefore, that we have something to offer in the committee's review of the proposed legislation.

If I may make a general point at the outset, we have many what one might call nits with the proposed legislation and regulations as drafted. Clarity of intent is essential in MVA legislation. We should have learned from the lessons of the past that we cannot leave much to the interpretation of victims, insurance companies or health care practitioners. We agree with Mr Sampson, as quoted in the *Law Times*, that "...the language of Bill 164 is ambiguous. It's a mess."

I'm not going to use our very short time today to talk about the nits, however. If you agree, we would be happy to prepare a list of these points of detail and give them to the committee before you complete your review. What we want to do today is to focus on a few major policy issues that are raised by the draft regulations and legislation.

One nit that we would like to address, however, relates to terminology: the consistent use of "medical," as in the "medical benefits," "medical and rehabilitation advisory panels" and so on, in the legislation and regulations. From section 15 of the regulations, 13 or 14 health care

professions, including physiotherapy, are lumped together under "medical."

We think the proper term is "health care," not "medical." The use of "medical" presupposes medicine and a monolithic medical model of treatment. The Regulated Health Professions Act, proclaimed in 1993, abandoned the monolithic medical model in favour of a more multi-disciplinary approach. We think the terminology in this legislation and regulations should be adjusted accordingly.

Ms Maureen Dwight: The first policy issue we'd like to raise is the issue of multiple payors. Under the current system, health care practitioners may receive payment for treating MVA victims from any of three or four sources: OHIP, the automobile insurer, the victim's group benefits plan carrier, and we may also have to report to the victim's disability plan administrator. The same will be the case under the proposed reforms.

The system of multiple payors places an enormous paper burden on health care practitioners and adds considerably to the overall cost of treatment. Multiple payors often means that the treating health care practitioner must deal with different reporting requirements, different standards and different fee schedules or coverage policies from each insurance company.

From the victim's point of view, multiple payors cause confusion. We regularly see victims who have delayed necessary treatment, to their long-term disadvantage, until they figured out which payor paid what and under which circumstances.

Also from the victim's perspective, we often see victims who exhaust their group benefits coverage limit in treating their MVA injuries and later on have an unrelated injury or disease. Since they've exhausted their group benefits coverage, they either go without proper treatment or they pay for it out of their pockets. Either way, they end up indirectly paying for the MVA, and that's not right.

From the payor's perspective, a multiple payor system is too susceptible to fraud. It allows the unscrupulous practitioner to bill more than one payor for the same treatments. It also allows the adaptation of the treatment program to the most comprehensive coverage package.

We think there should be only one payor for rehabilitation treatment, and if it's a motor vehicle accident, there should be only one payor, and that is the automobile insurer.

The second policy issue we'd like to address relates to the two-tier approach to maximum aggregate benefits for medical and rehabilitation treatments. I'm referring to subsection 21(1) of the draft regulations.

The physiotherapy association agrees with the \$1-million limit for catastrophic injuries, but we do think that there should be two other tiers under that \$1-million limit: a basic tier with a maximum of \$10,000 and a second tier with the \$75,000. In our experience, the majority of MVA cases could be treated within that basic tier.

The two-tier approach that has been proposed by the government does not reflect reality. Another tier with a lower limit would actively encourage practitioners to be cost-effective in their treatment programs. The first threshold of \$75,000 also risks becoming a self-fulfilling

prophesy, that everyone has a right to treatments up to that level. A basic tier with a lower maximum would allow for more accurate categorization.

The third point we'd like to make relates to the designated assessment centres, or the DACs. As long as DACs play a central role in the decision to continue or to discontinue treatment, it is essential that the DACs be truly independent and impartial, beholden to neither the insurer nor the insured.

The DAC's assessment must also be a peer review of treatments. A physician must review physician treatments, a chiropractor must review chiropractic treatments and so on. It is fundamentally inappropriate for one profession to critique the treatment approaches of another profession that the first profession is not educated in nor fully understands.

Further, DACs are very expensive assessment tools and we question whether they are cost-effective in our proposed tier 1 category or even in proposed tier 2. We think in these two tiers there should be provision for an alternative independent peer review and assessment by an accredited practitioner.

We would be happy to discuss our ideas on this concept at greater length if you are interested, and we believe it is important that physiotherapists be included in the advisory committee on the DACs.

Ms Holstein: The fourth issue we'd like to address is something called referral for profit. Referral for profit may occur when a health care practitioner refers his or her patients to a clinic in which that practitioner has a beneficial but passive interest for a course of rehabilitation treatment.

The potential for referral for profit has increased exponentially in Ontario since the College of Physicians and Surgeons removed its regulatory prohibition against physicians owning rehabilitation clinics.

Referral for profit raises serious questions about quality and efficacy of treatment. It raises serious questions about patient choice, and it provides the opportunity to churn patient treatments in order to maximize billing. Each is a serious problem.

From our discussions with the government, it's obvious the government is aware of and concerned about referral for profit. To our surprise, however, the proposals do not address the issue at all.

We think that if the government and the insurers are serious about containing costs and encouraging cost-effective treatment, referral for profit must be banned. This would mean that the legislation could authorize insurance companies to refuse payment for treatments to clinics in which the referring practitioner has a beneficial interest. In such cases, the clinic could be prohibited from going after the patient for the unpaid account, in the same way that the WCB prohibits rehabilitation clinics from going after WCB clients when the injured worker's claim is denied by WCB or abandoned by the worker.

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We recognize that there would have to be some exemption to cover clinics with bona fide specialization or for clinics in remote or underserved areas where travel to another clinic would impose an undue hardship on the accident victim.

It's important to note parenthetically that referral for profit is also a phenomenon outside the health care sector. Lawyers and other professionals with some type of MVA practice sometimes have a passive interest in rehabilitation clinics to which they refer their MVA clients. The concerns raised by this type of referral for profit are much the same as in the health care sector and we think equally deserving of careful attention.

A final issue we'd like to address is not really statutory or regulatory, but it does impact on the cost and effectiveness of rehabilitation for MVA victims.

Under the Regulated Health Professions Act, physiotherapy is a direct access profession. This means that patients may access physiotherapy directly, without the need for referral from a physician or other health care practitioner.

We think that in the majority of cases, the requirement for physician referral is a duplication of effort that imposes a large systemic cost on the MVA system, namely, the cumulative cost of medical examinations and reports that may not be required. Bear in mind that in the vast majority of physician referrals, the physician simply directs the physiotherapist to assess and treat. In other words, the physiotherapist assesses the injury and determines the appropriate treatment plan.

Furthermore, the requirement for physician referral builds a delay into the system, delaying the MVA victim's assessment and rehabilitation treatment. This often means that the victim's treatment program is longer and more intensive than it needed to have been and the patient's return to maximum functioning is delayed.

If insurance companies are serious about making the system as efficient and responsive as possible, they should rethink any requirement for physician referral. Bear in mind that under the standards of practice enforced by our regulatory body, physiotherapists can only assess and treat within their scope of practice and area of competence. Should a physiotherapist encounter a condition beyond the physiotherapy scope of practice or beyond that therapist's competence, the physiotherapist is required to refer the patient to a physician or other health care practitioner.

These conclude the major policy points we wish to raise.

Ms Castrilli: Thank you for your presentation. I'm a little troubled by your first page, where you talk about the nits. As a lawyer, I think language is very important and I think there might be some quite substantive issues around those nits. I wonder if you could talk a little bit about that. I notice that you left out a phrase in your presentation that talks about inconsistent use of terms and the need for definition of terms and more clarification. Could you give us some examples of the kinds of things you're talking about?

Ms Dwight: The quickest one that comes to mind is issues regarding physiotherapy and physical therapy—the difference in the terminology of “physiotherapist,” which is a regulated term under RHPA, and “physiotherapy,” which is not a regulated term, so that there's some confusion in that whole aspect—and what was alluded to about “medical” versus “health practitioner,” keeping the consistencies there.

Ms Castrilli: What flows from the first examples you cited?

Ms Dwight: When we were looking at, for example, your regulation of health practitioners and the fact that the treatment plans have to be done by a health practitioner, physiotherapists are a health practitioner, but if you later then talk about physiotherapy, that doesn't fall under your health practitioner standard. So there's an inconsistency there. When you talk about your 15 treatments, you talk about physiotherapy being the 15 treatments, whereas one of the things we'd probably like to see would be that it be "regulated physiotherapist," and that would cover under RHPA and under your health practitioner definition.

Ms Castrilli: Essentially, this would not disadvantage the client in this particular case?

Ms Dwight: No, I think it would be more consistent with the tone of the legislation. Our assumption, as we read through it, was probably that it was just quick in some of these areas. Some of the difficulties under the RHPA of the term of the practice versus the professional are difficult things to come to grips with and we'd like to assist with that.

Ms Lankin: Every time I hear these debates it reminds of the RHPA and the days of talking to ophthalmologists, optometrists and opticians, the scopes of practice and the different names, and that's true of a number of professions. I think that this legislation and many other pieces will eventually need to be brought in line with the new reality of a multidisciplinary approach to delivery of health care services. It is good that you point that out. It has been pointed out by other groups, and it's something I'm sure the government would be receptive to.

I'd like to ask you about the second issue you raised, and that's the two-tier approach to maximum aggregate benefits. You're looking for some greater stratification of that. I'm of two minds on this. I think when you speak about the first threshold of \$75,000 that you risk it becoming a self-fulfilling prophecy, that practitioners may treat up to that level if that amount is available. One, it casts doubt on the professional judgement and the motives of the practitioners, but it also does speak to this thought that there is some kind of psychological impact of having caps on thresholds.

It seems to me that most of the problem that we've heard from the industry in medical rehab overutilization does happen at the lower level that you're talking about, and so if it's useful perhaps there should be a lower cap, and many of the other cases might go over \$75,000 and, as we've heard with some acquired brain injury, if you do use the Glasgow coma scale, that doesn't adequately judge impairment and you may find that people are being inappropriately cut off at that point in time.

My concern is that you really want to get the appropriate treatment to the appropriate patient for the appropriate length of time, and I don't know how caps help you one way or the other. I guess what it comes to with what you've suggested, the numbers are fine, but what are the definitions to go with that and how would those definitions be judged and be helpful to the therapy of the individual, the treatment of the individual versus another tool for insurance companies to look at trying to manage costs?

Ms Dwight: I think we were looking at it two ways. One is that we want to get practitioners to really think about what they are doing and to come up with a treatment plan that is cost-effective. We feel that the health practitioners can work well within a cost-effective system and we can be pushed to be cost-effective. I think that we want to become not only cost-effective but outcome-oriented, and one of the things that we can be looking at by having a very tightly wound system is what sort of outcomes are we getting for these type of clients under that sort of dollar. You're going to push us a little bit to justify our outcomes, and I think there's nothing wrong with pushing the health practitioners a bit.

Ms Lankin: But let me ask you, how would you judge a person's injury that they're only going to get up to \$10,000, or they're going to be between \$10,000 and \$75,000, or they're catastrophic and over? That comes back to the cost management of the insurance company versus, I don't know what, in terms of judging what that client is likely to need in their treatment plan.

Ms Dwight: We struggled with that as a profession and among the individuals within the profession, and one of the areas that we felt was that that could be somewhat determined on functional terms rather than on a medical model-type term, whether people were working or were not working. There are a lot of walking wounded out there who are going to work every day. The insurance industry doesn't need to be paying for a functional capacity evaluation, which takes two days, for someone who's actually going to work every day. They don't need the intensity of the programs. A lot of the more expensive programs are predicated on people being off work in a program five days a week for four hours at a go. If people don't require that sort of treatment and they are working and they're functioning up to a certain level, we don't see that there's a need for that to be self-fulfilling.

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Mr Sampson: I appreciate your making the presentation today. I want to note with respect to the physician referral, this plan, of course, doesn't require it. The industry plan that was put to us did, so OMEGA did, and that was one of the items that we felt—strangely enough, the physicians came to us and said, "We don't want to be the gatekeeper either," so that was one of the items where we felt we didn't have to rely upon the physicians for the referral items.

With respect to three tiers, we certainly struggled with that. It wasn't the first time we heard of it. I'm not exactly sure where the three-tier concept came from, but it does have a lot of merit. I think if you really look at the 15-visit process, that's kind of our attempt to get at the three-tier concept to some extent, although what we struggled with was what the definition was between the various tiers. We're already struggling with one, catastrophic versus non-catastrophic, where there has been some history, so you can imagine how difficult it might be to introduce a brand-new tier and have that definition work through the system.

But I want to talk to the conflict, if I can, briefly, the conflict-of-interest issues. We struggled with that one as well as to whether or not we could do something in the Insurance Act that would deal with the automobile

insurance industry, but it was felt by us that with respect to all the professions involved it might be more appropriate to try to do that across the board, which would mean you would have to get into the health practitioner act issues and the issues as it relates to the governance of lawyers in this province. That's the can of worms that, given the time constraints, we felt we couldn't get into, but we hear your concerns. I'm wondering whether you share our concerns that you'd kind of have to do it across the board as opposed to just the Insurance Act.

Ms Holstein: Certainly we recognize that it's a very complex issue and any regulatory framework needs to be as broad as possible. It is an issue in this particular area certainly, and has been for a while, but we would support a much broader approach to it. I think it's that we need to know that something is moving in that direction.

Mr Sampson: We're certainly moving in that direction. I think the dilemma is all the help we can get. Going back to my second question, defining the three tiers would be very helpful, and I look forward to seeing something from you on that.

The Chair: Thank you, Ms Holstein and Ms Dwight, for sharing your knowledge with the committee.

CHAITANYA KALEVAR

The Chair: We now have Mr Kalevar to present to us. Welcome to the committee, Mr Kalevar.

Mr Chaitanya Kalevar: Thank you very much, Mr Chairman. First, I must thank Mr Sampson for doing the needed thing, that is, getting the consultation process going. Last time I tried to get on this process I didn't get anywhere. That was, of course, Bill 26. I must say that this is a much-needed improvement in the government process; however, I found out about my being on the list only yesterday, and between yesterday and today I was not able to do much more than a page of what I call "Executive Summary." I thought you wouldn't have time to read more anyway, but every word of it is perhaps important and I hope you will pay as much attention to it as to some of the lengthier briefs you have heard.

I am the insurance consumer, if you like, the guy who funds all these medical professionals, legal professionals, insurance industry professionals and so on. I am in many ways appalled with some of the presentations I heard, in particular I must say, the presentation I heard from Mr Scott a few minutes ago. When Mr Silipo asked him, "When the benefits have slowed down, how come the rates haven't come down?" he had some answer that, "I'm not the one who costed it," or whatever.

Well, he should have brought his costing expert with him, because as far as I'm concerned the transparency of the insurance industry is like a wall: You can't see nothing. Why can't we have legislation which requires transparency from the insurance industry, just like the federal government did with transparency in terms of interest rates? I think until this committee grapples with the issue of transparency, it doesn't matter how many changes you bring about—one time it is the NDP's expensive legislation, another time I don't know what it is of the present legislation, but the price keeps on going up and up and up.

Having said all that, let me come down to the summary page that is before you. I feel that, first and foremost, the insurance industry is related to many industries. For example, there are many things that are happening. Many accidents happen regularly at specified locations because the locations are dangerous, period.

I have written to the Ministry of Transportation before and asked that such locations be marked with a tow truck, because they are just around the corner anyway. I would suggest you pass on that message to the appropriate minister so that we get these dangerous locations identified on the highway. It's a simple thing. I'm not asking for a very difficult thing. If that is identified, drivers will be that much more careful and there will hopefully be less accidents at those locations.

Again, I'm very dissatisfied with the previous government, that they failed to give us affordable public auto insurance. I can't expect from this government that. However, right now, with public transit being cut back and unaffordable insurance rates, you are stranding people in their homes. They can't get anywhere, and then you want them to go out and look for jobs. In this large, vast GTA, looking for jobs is just not possible on a bike or on the TTC. You need a car. So it is important you deal with the unaffordability of the insurance rates and provide some flexibility in it.

Point 2: It is assumed that most of the insurance consumers have a job and can afford to buy. Well, the facts are, when people are without jobs, the unemployed, those on social assistance also have to look for jobs and they can't afford the insurance the way we have it. You can't write legislation as if everybody is playing at the golf club. Everybody is not playing at the golf club.

I think I called point 3 already.

The Facility Association is another interesting situation. One of the things they say is if you don't have coverage under an automobile insurance policy for at least 12 months in the last 24, then you get four risk points. Then it's back to the Facility Association, that high level. Obviously, that is ridiculous. Insurance expense is an expense. Either you have insurance or not.

Let's start from today. What is this going backwards and checking your thing? Suppose for two years somebody couldn't afford insurance at all. Why are we then suddenly putting him into the Facility Association four-risk level? It should be much lower, if at all. The cost of re-entry into an insured driving situation is just too high.

I am an auto driver when necessary. Otherwise, I like to use TTC or use a bike or even walk. I would suggest that right now, the cost of re-entry into insured driving after, say, 24 months' absence of driving, for whatever reason, is such that I would say it is easier to separate from your spouse and make up than to make up with your car or make up with the insurance industry. It's ridiculous. Am I married to my car or the insurance industry? Why is it so hard to get back in? It just doesn't make sense.

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Insurance is not something out there. It affects everyday decisions. Why is the insurance industry not able to provide the consumer a winter-only package or a week-

end-only package or a two-week vacation package, just as the car rental industry does on a daily basis? Why can't they do that? I like to use my bike and TTC as often as possible, but occasionally I have to do things where I need a car. If I can go and buy the insurance on that basis, I should be able to do that. The flexibility for the consumer is missing. It looks like the insurance industry runs in the interests of the insurance industry rather than to serve the consumer. There is no need for that.

Let me point out that the GTA is a net CO₂ producer. That is true of all urban areas. The fact that you are producing net CO₂ causes global warming. I don't have to tell you anything about that; you already know. It can also cause ozone depletion and ozone holes, which can also lead to skin cancer. Why are we making sure this is allowed to happen? When are we going to start writing legislation with a holistic picture of what impact that has rather than listening to the professionals in the industry, who have an economic interest to promote one way or the other and will forget the environment all the time? It's there.

The insurance industry and the way it is structured is not serving the environment, is not serving the consumer who wants to break the car habit. If you can't support the TTC, at least support legislation which will allow a flexible package of insurance for people who want to use it that way. You are making it very difficult to break the car habit, and the car habit is not serving the world or the environment, as we all know. If somebody doesn't know, I'll be glad to talk to them. It is certainly worth considering a holistic point of view, not a narrow point of view from an industry perspective.

It appears we have considerable concern about fraud in this area and in many other areas, but we have created a class of people by government regulation which does not allow any adverse consequences for them when they do something in the sense of civil wrong. That's like saying: "Hey, come on, do the fraud. There are no adverse consequences anyway." The kind of legislation which removes the adverse consequences of civil wrongs should be scrapped. I think this government is doing well in scrapping legislation, but start with scrapping legislation which removes the adverse consequences of civil wrongs. There are many I can point out, if you have time. Thank you very much.

Mr Silipo: Thank you, Mr Kalevar, for bringing a slightly different approach to this issue. The question of transparency I found interesting. Could you talk a bit more about the reference you made to the federal insurance rates as an example? One of the points we've been trying to make in these two days of initial hearings is that there ought to be some way to tie, in a much more direct fashion than we've seen so far, the product consumers are getting to the rates they are paying. What I find troubling, and I'm sure other members do, is that we're seeing in this package from the government less in the way of benefits, but we're not hearing from insurance companies that there'll be less in the way of premiums consumers have to pay. That is something we'll continue to press as a point to be addressed.

I'm glad to hear that even the government is indicating that a 7% or 8% increase is not stability in rates, as they seem to want to get to. I was interested in your point about transparency and how that might be better addressed through this legislation.

Mr Kalevar: First, I did not refer to the federal legislation on insurance. I think I referred to the—

Mr Silipo: Interest rates.

Mr Kalevar: Interest rates, so it's a different kettle of fish. I am not an insurance professional, as I brought to your attention. I am not privy to the cost structure of the insurance industry—and neither are you, I was surprised to find, even after these hearings.

Mr Silipo: We're not.

Mr Kalevar: I would suggest that Mr Sampson take the stance of standing firm and saying: "We want the cost structure of the insurance industry. We want to know how much it is costing. Why can't you tell us? Tell us now before we pass the legislation." I am sure, Mr Sampson, like the Samson I know, you can stand up to them.

Mr Wettlaufer: Mr Kalevar, I found your presentation very interesting. On a couple of questions you raise here, I, as a former insurance broker, feel very similar to you: the issue of availability, in particular the four risk points for no evidence of coverage under automobile insurance policy for the last 12 months out of 24. Perhaps that could be changed.

However, there is an issue we have to deal with in the legislation, and that is the issue of fraud. We've heard a lot about fraud here today, and one of the most common instances the insurance companies cite is fraud in the acceptance of a policy, whereby people apply for insurance and give totally inaccurate information prior to the acceptance of the policy. If they have had an accident or if they have had convictions, which can be readily traced under a previous insurance policy, they would prefer to go to the insurance broker and say, "No, I haven't been driving for the past 12 months and I don't have a policy." As a result, what has happened in the past is that insurance companies were giving policies with inadequate information. This rectified that problem, but it probably created a whole new problem, and we will try to deal with that.

Mr Kalevar: Right. It has overshot the mark.

Mr Wettlaufer: It perhaps did, yes. I really find your proposals on winter-only or weekend-only or two-week vacation packages interesting. The problem there would be one of cost, because the insurance companies tell us that it costs a minimum of X dollars to issue a policy before the coverage ever takes effect. I don't remember what that minimum is, but I know it is substantial. Is it affordable to have these packages? I don't know.

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Mr Kalevar: Thank you for the question. As an insurance broker, it appears you also are not privy to the cost structure of the insurance industry. Neither am I. And I said just a minute ago, get the cost structure in the open. Why not? Now that some of banks are selling insurance at the corner, I don't think the minimal cost is that high, and I would rather pay that minimal cost than cover myself end to end when I don't want to use the car end to end.

I strongly suggest you get the cost structure out and make the insurance industry flexible so we can get a consumer-sensitive rate structure that would encourage people to—some of you would benefit from going on your bike, healthwise. I strongly suggest you do that.

Mr Kwinter: Thank you very much for your presentation. It indeed was interesting. I assume you have a sense of humour when you made the comments about the tow trucks, because it would seem to me that if you truly meant that, they may not have the same sense of humour you have and may not understand at all what the tow-truck sign is doing there. But certainly if we had signage that indicated where there were high accident locations, that would probably be a very helpful to do so that motorists and pedestrians would be more aware of the problem.

I'm sure you know that when an insurance underwriter is trying to set rates, they have to evaluate risk. The question you're raising is, how do they do it and what is the risk? Again I don't know whether it was intended, but I get the impression when I read your presentation that you think as long as you're involved in transportation, whether you're a TTC rider, a bicycle rider or a car driver, you should get the same kind of rate because you're in transport, you're moving.

Mr Kalevar: That's right.

Mr Kwinter: Well, that's where we have a problem. It would be a very tough sell to tell an insurance underwriter that the fact you ride the TTC or a bicycle gives you the same kind of driving experience as someone who drives a car. I think that is going to be a major problem.

I really feel you have made some interesting points, the idea that if you want to just have short-term insurance for a specific purpose, possibly that could be structured. You'd have to pay a premium. I don't think you can just take the insurance premium and divide by 12 or 52 or whatever period of time.

Mr Kalevar: Of course not. It would be a little more.

Mr Kwinter: You'd have to pay a premium. It would be interesting to hear from the industry whether that is feasible. But you also should know that if you do have insurance and something comes up, for example, you've bought a new car and you still have your old car and it's going to take you 10 days or two weeks to dispose of it, most insurance companies will cover you. They'll just do it as a courtesy, if you're a customer and you've proven what you're doing. There is some flexibility, and maybe there is a possibility to get that into a regulated form so people can access the kind of insurance they need to suit their particular needs.

Mr Kalevar: With all due respect, my experience with the insurance industry is that when you have a claim, they show you their tail. It's not easy to collect an insurance claim. I think they're showing you their tail right now with respect to the cost structure. Get the cost structure out first; let the public know what the cost structure is. It's as simple as that. If you people can't get the cost structure out, don't expect me to find out for you.

The Chair: Thank you very much, Mr Kalevar. We appreciate your input to our committee this afternoon.

HEAD INJURY REHABILITATION INC

The Chair: We now welcome Head Injury Rehabilitation Inc to our committee room. Welcome, gentlemen.

Mr Joe Ozembloski: Good afternoon, members of the committee. We are survivors of head injuries due to auto accidents. I myself am Joseph Ozembloski. This is Mr Frank Bruno, Ms Ann Lewis and Dr Oleh Trojan.

Before we begin our presentation, we would like to thank the committee for inviting us here today. As I said, we are survivors of motor vehicle accidents who have suffered a head injury resulting in brain damage. Although we have rehabilitation in the same clinic, we would like to make it clear that the difficulties we encounter daily are representative of most who have suffered brain damage through a motor vehicle accident. We understand that proposed changes to the legislation will not affect us; however, we are concerned. Because of our common experience, we are concerned that the changes may have a negative effect on future brain-injured survivors in motor vehicle accidents.

It is our hope today that we will be able to clearly state our purpose for attending by supplying the committee with the knowledge we have gained by being brain-injured; not the least is the personal suffering each one of us, and many others, has been subjected to. Therefore, we will be focusing on the following areas:

(1) To educate the committee on the effects of brain injury following a motor vehicle accident.

(2) To underline the benefits of rehabilitation—for example, cognitive and supportive therapy; occupational therapy, physiotherapy, speech and language pathology; as well as the need for good case management, because being brain-injured, we are, especially at the time of the accident, unable to advocate for ourselves.

(3) Brain injury is often an invisible impairment. We wish to raise concerns that the needs of future brain-injured individuals may not be met because of poor diagnosis.

(4) To present to the committee the personal experience of what it means to live with a brain injury.

If the standing committee knew what it took to put this presentation together, we would not need to be here today. Because our deficits are so great, we had to do this as a collective effort with the assistance of our therapists. This presentation was written while experiencing constant pain, but we confronted the daily emotional turmoil that disrupts our lives because we felt it was imperative to be here today. We have worked on this presentation over the last two months, and it has been a constant struggle. Please do not take the logic of our prose as an indication of our current health, because this would be a false impression.

Let us tell you what each of us, in varying degrees, goes through. Try to imagine how you would be unable to do your present job, as members of the committee, if you had to confront the following difficulties constantly, every day:

Constant debilitating mental and physical fatigue.

Mr Frank Bruno: Constant and debilitating headaches.

Ms Ann Lewis: The inability to focus on a task.

Dr Oleh Trojan: Poor to almost non-existent concentration.

Mr Ozembloski: Little or no short-term memory.

Mr Bruno: The inability to process information sufficient to keep employment.

Ms Lewis: Difficulty with speech and word finding.

Dr Trojan: Difficulty in communicating effectively with others.

Mr Ozembloski: Constantly being misunderstood or misinterpreted.

Mr Bruno: Constantly misunderstanding others.

Ms Lewis: The inability to follow a conversation.

Dr Trojan: Difficulty reading and comprehending what you have read.

Mr Ozembloski: Just not being able to follow the plot of a movie or a TV program.

Mr Bruno: Not being able to handle more than one task at one time. For example, we either listen or write while on the phone; we can't do both at the same time.

Ms Lewis: Visual impairments such as constant double vision and perceptual problems.

Dr Trojan: The inability to tolerate sounds except at an extremely low volume. This means you can't enjoy your children playing as children do, or music, or being able to block out the sound of traffic.

Mr Ozembloski: The physical and emotional pain of physical impairments resulting from brain injury.

Mr Bruno: Confusion; that's a big one.

Ms Lewis: Disorientation resulting from confusion; that's why it's so big.

Dr Trojan: The inability to follow or understand simple instructions.

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Mr Ozembloski: The inability to initiate tasks on one's own.

Mr Bruno: Lack of motivation resulting from depression.

Ms Lewis: Depression.

Dr Trojan: Anxiety.

Mr Ozembloski: Frustration resulting in extreme stress.

Mr Bruno: Loss of confidence in ourselves and our ability to do almost anything.

Ms Lewis: Loss of self-esteem.

Dr Trojan: Behavioural difficulties; for example, being overly rigid in one's thinking, poor anger management, misreading the intentions of others, impulsiveness, socially unacceptable behaviour such as invading the personal space of others, inappropriate touching, always saying the wrong thing in the wrong place at the wrong time.

Mr Ozembloski: The inability to organize or follow a daily plan.

Mr Bruno: The inability to work in a routine manner.

Ms Lewis: The inability to learn new things or remember things that were once commonplace to us.

Dr Trojan: Loss of our previous skills and knowledge.

Mr Ozembloski: Sleep deprivation.

Mr Bruno: We lose our friends, children and families because of our difficulties, which are often inexplicable to them.

Ms Lewis: Divorce is extremely high among the brain-injured.

Dr Trojan: We are unemployed and often unemployable.

Mr Ozembloski: Poverty is far too common.

Mr Bruno: And we feel constantly overwhelmed by our difficulties.

If, after this long but by no means complete list of our daily difficulties, you are feeling overwhelmed, this is only a small portion of what we have to face. However, it is important to point out that without sufficient access to rehabilitation services, we would not be able to be here today to make this presentation. As difficult as our deficits are, they would be much worse without such access.

In any proposal that is made for changes in automobile insurance legislation, the need for speedy access to such services as mentioned above must be highlighted. This is especially true for survivors of brain injury, as the first two years of recovery are the most important. At the same time, it must be stressed that it is also a perilous time for survivors of brain injury; our injuries and inability to cope are at their greatest and our ability to understand is at its least. This means that we are extremely vulnerable to making poor judgements about treatment without proper representation.

We understand that the proposed legislation recommends the establishment of regional assessment centres. We applaud this recommendation. However, we strongly suggest that such centres must be available to accident survivors from the start and not simply as a mechanism for settling disputes between survivors and insurers. Such centres must be independent in nature and, from our experience, must include health practitioners well versed in the needs of the brain-injured with respect to treatment modalities and treatment planning.

Sending the brain-injured to their GPs for assistance in the formulation of their treatment plan is grossly inadequate; few have the kind of extensive knowledge required to form good judgements about our treatment. The brain-injured and their families are ill equipped, especially at the time of the accident, to make comprehensive decisions about something so debilitating as a brain injury. We are extremely concerned about the possibility that, without early access to such a facility, which ought to offer assistance in obtaining good case management services, the potential for the brain-injured to suffer the double injury of neglect is great.

Ms Lewis: Why neglect? Because just looking at us you cannot see our injury. We may very well present ourselves to you as seemingly perfectly able, but we are not. We suffer from what we have called an invisible impairment. Indeed, because of shame or concern for the loss of friends and family, we often try to hide our deficits. But not today.

You see before you representatives of the brain-injured who were once good mothers, fathers, sisters, brothers, lovers and friends. We were bank executives, physics professors, graphic designers, entrepreneurs, students who once had a promising future and even insurance adjusters; we were lawyers, doctors, fork-lift truck drivers, gardeners, athletes and even government employees.

We stand before you having lost our place in society due to our brain injuries received in a motor vehicle accident. Since that time, we have seen a great deal. We have seen hospitals and doctors and no end of specialists and tests upon tests upon tests; so many tests to see if we are brain-injured, to see if we deserve less, not more; and worse, to see if we are to be believed. That is the most invisible part of our invisible impairment: to be so subjected to a system that seeks not to believe us when we say we suffer, to be held to the tyranny of having to repeat our story endlessly, because in all honesty we are not believed. That is why, year after year, we are made to go through gruelling tests which leave many of us sick for weeks after, because our brains are forced to attempt to do things they can no longer do.

Dr Trojan: In conclusion, we are very concerned about the way the proposed legislation has defined the division between the non-catastrophic and catastrophic head-injured. The danger of such an approach is that a significant fraction of survivors may indeed receive inadequate rehabilitation. Minor head injuries, whose debilitating effects can include much of what we have reported in our list above, can in fact go initially unrecognized, to the point that rough justice is dispensed.

Moreover, we are of the opinion that it may be unfair to head-injured persons to have court cases settled within a two-year period, as the impact of minor head injuries can go, and has in the past gone, unrecognized beyond a two-year period. As we noted above, we welcome the establishment of regional assessment centres, but only under the proviso that they be skilled in head injury prediction, prognostication and production of valid treatment. To this end, we would like to propose that a working party or task force be established to develop and subsequently propose criteria and policies for triaging head-injured claimants and to define more clearly the hierarchy of benefits and treatment modalities. The composition of such a task force should include representatives of: (1) head injury survivors; (2) members of the general public; (3) key professionals, such as medical head injury specialists, rehabilitation specialists, psychologists, lawyers, insurance experts and government officials.

In addition, as sound judgement can be poor to non-existent following a motor vehicle accident, these centres must be allowed from the outset to assess brain-injured individuals for financial incompetence. Such an assessment must be bound to an appropriate appeals and review process.

Our presentation comes, as we have said, from our experience. We trust that this committee will include this experience and its deliberation and subsequent drafting of the final legislation. Future brain-injured people do not have the luxury of waiting for a bill that corrects omissions. The quality of their life depends on legislation sufficient to their needs at the moment that they suffer such a tragedy.

Mr Ozembloski: Presenters, representatives of head injuries due to MVAs, motor vehicle accidents, Ann Lewis, Dr Oleh Trojan, Frank Bruno and I, Joseph Ozembloski, would like to thank you for your attention in listening to our presentation.

Mrs Marland: Speaking on behalf of the government, we would like to thank you very sincerely, because obviously you have spent a lot of time and, as you said yourselves, have put a tremendous effort into being here today and making this presentation. But your presentation is so well worded and put together that you obviously put a lot of effort into that before you even got here today. So we appreciate very much your input. It is very important to us.

I do have a question for you, because obviously this whole subject of automobile insurance and all the different stakeholders in it presents a tremendous challenge to this government, as it did to the previous governments. We're trying to find a solution. I'm just wondering if you could tell us perhaps how you would rebalance the distribution of benefits in the auto insurance system in order to give the assistance to everyone in all the categories that is needed, without increasing the premiums. Is there a way that you would suggest that could be engineered?

The other thing I want to say to you is that I'm absolutely shocked where you say, on page 6, when you're talking about the tyranny of the testing that you go through, "because in all honesty we are not believed." I think that must be the worst black mark possible for a commentary on the industry. I hope we can get the industry to a format of dealing with all claims so that no one else will need to come back and tell us that they're not believed. Aside from that, I'm wondering if you can give us some help about how to deal with these different approaches.

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Dr Trojan: First, to bring things into perspective, I'm the oldest surviving member of a head injury except for one individual. It's been nine and a half years since my head injury. I have recovered to a significant degree, mainly due to rehabilitation. I am not privy to the information or the details of how to balance things. However, our suggestion for a task force to look into the various aspects of dealing with head-injured accident cases would be such a place where this could be handled.

Ms Castrilli: Speaking from the Liberal Party perspective, I couldn't be more moved by the presentation you made. It was thoughtful, it was articulate, it was well presented. The government will do well to listen to your suggestions. There are no questions from us, except I do want to say we applaud your efforts for coming here today.

Ms Lankin: I also appreciate your presentation. From what we've been hearing over the last couple of days, it's like there's two solitudes out there. The insurance companies are saying benefits are too rich, there's too much fraud in the system, there are too many people getting rehabilitation for too long who don't need it, that "We're not making any money, there's no profit any more, so we're stopping writing policies and benefits have got to be cut." And then people like yourselves come forward and you talk about being put through test after test after test, and you know there's got to be duplication of costs in that. We had people come forward yesterday who were accident victims, not brain-injured but soft tissue injuries, who have paid hefty premiums for years and then have

one accident and are seriously incapacitated, functionally incapacitated, yet are fighting the insurance company every step of the way just to get the benefits they thought they were entitled to under their premiums. It's hard to understand what's going on between these two areas.

Could you tell us a little bit about your experience in attempting to get the coverage for the rehab benefits that you believed you were entitled to under your policies, what sorts of tests or duplication of tests you've been put through, and the attitude of the insurance company you dealt with at the time?

Mr Ozembloski: I was most recently exposed to tests of this sort. It consisted of seeing three doctors: a psychiatrist, a neurologist, and I went for psych-neurology tests. The psychological or neurological tests were the last, and that happened mid-January, approximately six weeks ago. I'm still waiting to have a meeting with the insurance company; six weeks I've been waiting for a meeting to have the results to decide whether I'm even entitled to certain benefits. My accident will have been two years ago this coming June.

Prior to this last neuropsych test I'm talking about, I also saw a neurologist and a psychiatrist. They were a good way out of my way to get there, and there was no benefits whatsoever. I'm covered by Bill 164, and under one of the things in there, it's the insurance company's right to insist on this testing, which is fair, in my opinion. But—well, that's as far as it goes: but.

Ms Lankin: Does anyone else want to add to that?

Ms Lewis: Over the last two years, I have had to go for neuropsychological testing. I went to a very reputable doctor who teaches at U of T, but the insurance company would not take his word for what he diagnosed. As a result, I went to him for two days and then I was sent to a doctor chosen by the insurance company for another two days. The next year, I was subjected to both of those again, two days with the doctor of my choice and two days by the insurance company's choice, then again for psych-vocational testing. Because of my inability to concentrate and to sit for a long time, because I have physical injuries, that took me about four times going there, which might normally be in one day.

That's just a part of it. But for those particular types of tests, it seems, regardless of how reputable the caregiver is, the insurance company insists on sending you to a doctor of their choice in addition. I personally think it's a terrible waste of all our money.

The Vice-Chair: I thank the representatives from Head Injury Rehabilitation Inc for a very, very poignant presentation. Have a very good day.

BROKERS ALLIANCE FOR INSURANCE REFORM

The Vice-Chair: Next is the Brokers Alliance for Insurance Reform, Les Freud.

Mr Les Freud: Thank you very much. My name is Les Freud. Good afternoon, ladies and gentlemen, Mr Chairman. I wish to thank you for the opportunity to appear at these hearings. I'm here to address you on behalf of the clients, consumers of small-size insurance brokers. Two hundred of these brokers have dared to join

force under the name BAIR, which stands for Brokers Alliance for Insurance Reform. These 200 brokers act on behalf of over a quarter of a million insureds.

The proposed draft legislation goes a long way to be fair to all parties concerned: insurance companies, insureds and lawyers. It is, however, by no means perfect, but the fact is, I don't think you can fashion an insurance act that will please all parties.

My intention is not to focus on the benefits section of the proposed act, as I believe that by the end of these hearings you will have heard from groups with much greater expertise on the subject than I possess. However, I would like to point out that unless the verbal threshold is clearly defined, using legal precedents set by actions brought under the OMPP, insurers will be forced to reflect the high cost of litigation in their premiums. This in turn will negate the savings brought about by the reduction of benefits under the proposed act. Just as we should not underestimate the legal profession's ability to find sources of income, we should keep in mind the insurance industry's ability to justify increases in lost reserves and premiums.

The aim of our organization is to make sure that automobile insurance becomes accessible and fairly priced. It has been estimated that 20% to 25% of vehicles on our roads are uninsured. Most of these vehicles are driven by what has been described to me by a member of the Metropolitan Toronto Police as middle-class citizens. Naturally, some of these vehicles will never be insured, and that's regardless of cost or accessibility of coverage; however, the vast majority of uninsured vehicles in Ontario and, more specifically, in Metropolitan Toronto are without insurance because coverage has become inaccessible, just not available. By the way, the percentage of uninsured vehicles on the roads in 1990 was 5% to 10%, according to the same police officer.

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In 1990, there were approximately 2,500 registered insurance brokerages in Ontario. In 1995, the number declined to 1,900. I have no doubt that there is a strong correlation between the decline in the number of brokers and the increase in the number of uninsured drivers.

What has caused the decline in an industry known for its independent-minded brokers? Naturally, some brokerages just failed. Others were sold following the death or retirement of the principal. But the majority of the brokerages had to merge with others. Why this great need all of a sudden to give up one's independence, one's corporate identity, and amalgamate with another brokerage? The most common reason is loss of markets; insurance companies have cancelled their contracts with brokers after years of contractual relationship. The reasons given by the companies for the termination of these relationships ranged from "low volume of business" to "unprofitable book of business" to "We do not wish to be the only market in your office."

I realize this is not the right forum to address the issue of broker-company relationships. However, I believe this is the right forum to address the effect of these contract terminations on the public.

Each time an insurance company cancels a broker's contract, accessibility becomes an issue. What happens to

the insured who is covered through a broker whose contract was just cancelled by the insurer of his vehicle? In a real-life scenario, the broker is forced to offer the discarded book of business of one insurance company to another. Ladies and gentlemen, that book of business is in fact the insurance policies of hundreds or, at times, thousands of Ontario drivers—people, not just paper.

If the broker is lucky, he will persuade one of his carriers—companies—to take on the risk of insuring people the other company did not want. But there is a catch. They may not want all these clients; the clients with two or maybe three not-at-fault losses in the last five years may not be acceptable. Perhaps the client with an at-fault accident in the last 12 months will not be offered accident forgiveness. In other words, all-comers rules notwithstanding, a new set of underwriting criteria has to be agreed to. The broker, being at a disadvantage, has to agree to the terms of the new company for the replacement of his insureds' coverage. The end result: Drivers who would have been able to continue their coverage with the incumbent insurer, paying a fair and reasonable premium for their automobile insurance, find themselves without a ready market for insurance protection. All that is available to them is a substandard insurer with considerably higher premiums than in the previous year, and I don't mean a meagre 10% or 20% increase in premium. The new premiums are literally double those of the previous year, yet the drivers are not necessarily what we would call Facility risks. Therefore, 20% to 25% of vehicles on Ontario roads are uninsured.

There is an irony to this whole situation, an irony which seems to be missed by all concerned other than perhaps insurance brokers. The insurance industry has fought tooth and nail to keep auto insurance out of the government's hands, the general insurance industry is fighting tooth and nail to keep the banks out of automobile insurance distribution, but at the same time, they prohibit brokers from selling auto insurance. We have broker members who have been told by one or another of their auto insurance carriers not to submit any automobile insurance applications.

I come back to my earlier statement. What we want is fair access for the public to a mandatory product: automobile insurance. You have an opportunity to help reduce the number of uninsured vehicles in Ontario. You can do this by giving the Ontario Insurance Commission, through legislation, a strong and clear mandate to deal in a decisive manner with non-compliance by insurance companies with the all-comer rule as well as rules relating to the treatment of policies for those insureds who express a desire to continue their coverage with an insurer following the cancellation of the broker's contract.

Ladies and gentlemen, this matter is in your hands. This is the time to deal with it and this is the time to send a message to the insurance industry: "You want to remain in automobile insurance? Make it accessible." Thank you very much.

Mr Crozier: Thank you for your presentation. We had representation from the Insurance Brokers Association of Ontario. Do members of your group belong to that as well, or are you a separate group?

Mr Freud: Some are members of the association and some aren't.

Mr Crozier: But your objectives would be similar?

Mr Freud: I would think they are similar, but we are more involved at the grass-roots level. We don't generally make representations to government committees. We try to deal with the broker and the insurance company directly. We are a relatively new organization, sort of a mutual benefit society, if you please, for the moment, and what we are trying to do is just deal with the day-to-day problems on behalf of the brokers.

Mr Crozier: You mentioned the threshold. Were you referring to the economic loss, that it should have a threshold, in your opinion?

Mr Freud: Whatever the final legislation is going to be, it must take into consideration the precedents set under litigation brought about under OMPP: a definition of what is "catastrophic," what is "long-term disability." I meant it in that sense.

Ms Lankin: I'm hoping we'll be able to get a copy of your presentation in writing. There are some interesting issues you raise.

The issue of accessibility: I'm wondering if you could explain that a little more for me. You indicated that there are brokers who are being directed not to write automobile insurance, for example. Presumably, those companies are not writing new policies at this point. Is that the problem, or is it more the relationship with certain brokers or groups of brokers?

Mr Freud: It's a problem of individual brokerages and individual companies. Interestingly, this week I spoke to two brokers. One said to me, "We've been told by the XYZ company, 'No more automobile insurance.'" A day later I met with another broker who said: "I guess these hearings are really coming along. Guess what? We were called by the XYZ company saying, 'Send us all your automobile insurance.'" On Monday I have one report; on Tuesday I have another.

Ms Lankin: What would be behind that? What would the company's reasons be?

Mr Freud: From personal experience, insurance companies, to put it very simply, are looking for what they call a balanced book. If a broker's book of business consists a lot more of auto than property, they don't want this broker to continue to do automobile insurance business. I did ask the second broker, "Just out of curiosity, would you agree that your mix of business is heavy on property?" He says yes.

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Mr Wettlaufer: Thank you, Les. I wonder if you could shed a little light on a couple of factors for the record and for the benefit of all the members of the committee. We have in the province compulsory automobile insurance, correct?

Mr Freud: Correct.

Mr Wettlaufer: We have a take-all-comers rule, correct?

Mr Freud: So I understand.

Mr Wettlaufer: Correct; thank you. We have a system by which tied selling is not allowed.

Mr Freud: That is also correct.

Mr Wettlaufer: Yet we have balanced portfolios.

Mr Freud: Well, we are being asked for balanced portfolios, yes.

Mrs Marland: What does that mean?

Mr Wettlaufer: Tied selling is a process by which an insurance company cannot insist on an automobile policy only for someone who has other business. Would you say that the Ontario Insurance Commission has been effective in preventing abuses of these programs?

Mr Freud: Based on a meeting I personally attended, the answer is absolutely not.

Mr Wettlaufer: Would you comment on what makes a broker become bad in so far as an insurance company is concerned, i.e., that one year he might not be and another year he might be?

Mr Freud: A simple answer is loss ratio, which means that if the total payout on claims and expenses exceeds the total income of premium for his book of business to a particular company, he is not a good broker, and that can change from year to year and from company to company. At the same time, it sort of begs the question, if the insurance company is ultimately responsible for underwriting the risk provided by the broker, if the risk "goes sour," why is the broker penalized?

The Vice-Chair: Mr Freud, thank you very much for your presentation today. Have a good day.

CENTRE FOR TRAUMATIC BRAIN INJURY REHABILITATION

The Vice-Chair: Next is the Centre for Traumatic Brain Injury Rehabilitation. Good afternoon, and welcome.

Mr Gary Direnfeld: Thank you. It's a pleasure to be here. I'm Gary Direnfeld, the executive director of the Centre for Traumatic Brain Injury Rehabilitation. Handed out to you is a copy of my presentation, as well as some very specific amendments to the proposed draft bill.

Page 1 talks about our centre. We're a private facility providing services to persons who have sustained a brain injury as a result of motor vehicle accidents, and our service process has been developed to enable claimants reasonable access to treatment within the regulations governing rehabilitation funding by auto insurers. Our centre has been operational for 21 months. Over this period, ladies and gentlemen, we've had over 200 referrals. Of these referrals—they all go through a screening process—roughly one third we see as not appropriate referrals, for various reasons. Rather than coming from their family doctor, they may really have been sent by their lawyer or they may have other problems that can preclude their participation in our program, such as pain or psychiatric issues. Another third we will offer limited services to, which in essence is neuropsychological assessment. The remaining third wind up getting more comprehensive assessments, leading to rehabilitation.

Our average length of treatment is between seven and nine months. The average cost of treatment ranges from \$60,000 to \$80,000, and there are about 30 to 40 persons receiving active service at any one time. You can do the math and figure out just how well we're doing on an annual basis.

Our centre is staffed by 20 full-time staff and 10 part-time staff. The staff represent various professional

disciplines, including neuropsychology, speech-language pathology, education, social work, occupational therapy, vocational counselling and physiotherapy.

Our centre, I'm proud to say, is the first and currently the only private brain injury rehabilitation program accredited by the CCHSA, the Canadian Council on Health Services Accreditation. This is the body that accredits hospitals throughout Canada.

On page 2, my executive summary:

(1) Brain injury is often accompanied by other injuries. Assessment of brain injuries is more complex and time-consuming than other injuries. Assessment and rehabilitation is lengthy and requires services of an integrated multidisciplinary team. We are recommending that with respect to brain injuries the \$75,000 maximum aggregate amount of all benefits should be increased to \$150,000. You saw on the page before that the average cost of treatment in our facility is between \$60,000 and \$80,000. There is still a large group of persons who require residentially based treatment that will far exceed that \$75,000 maximum, and they need it. They may not be catastrophically injured, as defined currently by the act, but they still need far more in excess of \$75,000 worth of treatment.

(2) Designated assessment centres, the DACs, must be seen to be operating without bias or conflict of interest; with broad representation from professional clinical groups; with the highest standards, operating with a quality assurance program; and under the direction of a committee appointed by the Minister of Finance. The point I'd like to drive home is that of a quality assurance program. This is a relatively no-cost mechanism that subjects the DACs to scrutiny to say they are operating within certain standards, and they must give evidence and proof of those standards. You don't want people acting outside of what we refer to as their scope of practice, where, for instance, an orthopaedic physician comments on cognitive issues.

(3) When the conditions of the act have been satisfied, insurers must pay for rehabilitation. It's a simple point, but it needs to be driven home. If a fee schedule is to be set, it must be set by the Minister of Finance and only after broad consultation with service providers, professional groups and the insurance industry rather than by the Ontario Insurance Commission. The insurance industry must recognize their obligation to pay directly to service providers for goods and services provided to the insured and must accept billing provided using general accounting practices. Straightforward.

(4) Rehabilitation, to be truly successful, must begin very early on in the recovery process. In treating brain injuries, part of the rehab process includes a comprehensive assessment. Persons with brain injuries must be given access to these services immediately. Currently, the draft legislation does not provide a mechanism that ensures a timely conclusion to the approval process. We believe a section must be added to the act which gives the insured person with a brain injury the right to treatment. Further, the act must provide a mechanism whereby the insurer is held responsible for payment for any reasonable costs of services outlined by the hospital in

their discharge plans for the insured person who has sustained a brain injury.

Not written into my report are some interesting points or facts. When I reviewed my receivables list last week I discovered that a full 36% of my outstanding receivables were greater than 120 days. This is payment for services rendered to persons who bona fide have brain injuries as a result of motor vehicle accidents, where the insurer is supposed to be paying under Bill 164 within 14 days. That 36% of outstanding receivables represents 46% of my outstanding dollars and cents. I'm saying that a large chunk of my money is tied up carrying the weight of non-paying insurers.

One of the other problems that we see is the undermining of claimants by insurance companies on a routine basis. Arbitrarily, their income replacement benefits are withdrawn and then reinstated after some point in time. There seems to be no substantiating documentation to say, "You did such and so," or "We found out this and that, and therefore...." They're just taken away.

1650

People are not given their clear entitlement in terms of access to service. A lot of rehab companies worry about getting paid, as do we, and they enter into agreements negotiating the rehab plans with the insurers on the backs of the needs of the insured person. A lot of companies will go to the insurer worried about their receivables and say, "Here's the treatment plan." The insurer looks at the treatment plan and treats it like a menu and says, "I'll have line 1, give me a little bit of this and half a taste of that."

The rehab company, worried about its receivables, enters into this, what I call a devil's pact, thinking: "This is good. I'll get the insurance company on board, we'll show them that we're reputable, that we're nice people. We'll work them in and little by little they'll do more in terms of the rehab plan."

Working with brain-injured persons simply takes time. Most of the brain-injured persons we see don't have a full appreciation of why they're coming to our centre until they're about three months into treatment. They have impaired judgement. They shouldn't be expected to have a full appreciation until they've received some of this treatment.

What happens is, the insurance company, after one, two or three months, says, "Send me a progress report." The rehab company says, "Well, they haven't made progress yet, and really, they've only attended for part of it because we're still trying to work that—" They say: "What? No progress? I've let you do such and so. Obviously they won't benefit from rehabilitation, so we're cutting off funding." So a large number of our clients have been seen at other private facilities where their funding has been withdrawn by the insurer and now they're out without service again.

We have a policy at our centre: We will hold the insurance companies responsible for payment of funds. If the insurance company says it's withdrawing funding, we have the claimant on board that they will support us through the mediation, arbitration and litigation process. So we will offer ongoing service, but there are very few

facilities that have the financial backing that would enable them to do that.

Even mediation; my experience in having gone to many mediations is that it's not entered into as an honourable process. In the mediation that I was at on Friday, the representative for the insurer looks across the table at me and says: "You know what? In a few more weeks when this proposal goes through, you're going to be out of business anyway, so what does it matter?" These are the attitudes I have to face.

In another mediation where I had my intake worker go, the lawyer for the insurance company takes my intake worker aside and says—and there was \$50,000 outstanding on this—"Listen, I'll pay you 80 cents on the dollar. Just discharge the client." This client was two thirds of the way through treatment. My intake worker, simply aghast at this, says "What do you mean, just discharge the client?" "We're both businessmen. You walk away with 40 Gs, we close our file, and the client got something out of it. Everyone's a winner." That case is currently in litigation.

These are our experiences.

My message to you is, if we're going to have legislation governing auto insurance, we can't have the myth of auto insurance. The way the draft legislation is written right now, I call it the five-and-five plan. Auto insurers will pay the easiest, lower 5% of claimants or, alternatively, the 5% of clearly catastrophic, those that—you know what?—no one can deny because, my God, this person's lying dead in front of us. That will leave 90% of these claimants with nothing. That's not the intent of auto insurance. Auto insurance has to be a promise to pay. Simple.

I have left a copy of my report. I have 23 recommendations in terms of amendments to help put teeth into the legislation.

If you listen to the auto insurers, the tow-truck drivers are ripping them off, the auto mechanics and auto body shops are ripping them off, the rehab facilities are ripping them off, the doctors are ripping them off and so are the claimants because they're using it as a form of welfare. Well, you know what? That doesn't leave a decent resident in the province of Ontario. I refuse to believe that all citizens in the province of Ontario are bad.

We have to have legislation with teeth. Kindly review my recommendations. Our centre will always stand available for consultation on these matters. Thank you very much.

Ms Lankin: Thank you very much. I appreciate your presentation and I think your comments at the end are why even Mr Sampson was driven to the point of saying that if the insurance companies didn't lower rates, he'd introduce public auto insurance. So it seems to be the inevitable conclusion.

Mr Sampson: Careful. You've been reading the Star too much.

Ms Lankin: You made two points I want to comment on, one the fact that rehabilitation has to start early and the fact that there should be a guarantee that the hospital's discharge plans for a treatment plan should be followed through, and that should be something that would

be covered by the insurer until you get down the road and go through DACs and all those other sorts of things.

Mr Direnfeld: Correct.

Ms Lankin: Could you tell me some examples that you have where that's not happening and what it means?

Mr Direnfeld: Oh, yes—

Ms Lankin: Second question: Your figures of average cost of treatment of \$60,000 to \$80,000. Does that include case management? Because the \$75,000 limit that's here doesn't include case management. If yours doesn't include case management, is that cap still a problem and does \$150,000 solve all the problem?

Mr Direnfeld: That figure does not include case management. You can appreciate, with the size of the multidisciplinary team that we have, it's rare that we have to use resources outside our own centre. Case management is redundant when people are referred to us. So if you're using a multidisciplinary setting, the necessity of case management declines.

Ms Lankin: Even if there are physical problems as well as brain injuries?

Mr Direnfeld: There you may need the case manager, but even some of the larger brain injury facilities have facility for physiotherapy treatments as well.

In respect of your first question, we've had a number of referrals from the Hospital for Sick Children, and in a few cases we've been used to bridge the gap for some patients being referred to the Hugh MacMillan Medical Centre, which is a subacute rehabilitation centre. So the discharge planner at Sick Kids phones us up: "Could you put some services in at home to bridge the gap? Then when the waiting list is down, the person will get into Hugh Mac." Beautiful, no problem; very reasonable use of our resources. Let's do it. There happened to be a case manager on this file, wanted to get the insurer approvals in place; went ahead, got insurer approvals. We put in our services.

The child next goes to Hugh Mac. While at Hugh Mac, they were short a speech-language pathologist. They phoned us, could we do outreach by coming into their hospital? I was flattered. Yes, let's do it. Again, we work it through the case manager. We get insurer approval. In this situation, everything's on board. That case wrapped up in October. I still haven't been paid. I—

The Vice-Chair: I'm sorry. I thought you had concluded there.

Mr Direnfeld: No. Would you like me to finish?

The Vice-Chair: Please finish off. My apologies.

Mr Direnfeld: We still haven't been paid. The insurance company looks at our bill, which is detailed billing, and now they're saying: "When I look at line 3, item 4, there was preparation. What did that worker prepare?" "They prepared, they had to talk and coordinate." "Oh, they did some coordination in there?" "Well, yes, in working between the case manager and two hospitals, you can imagine that's going to take some coordination." "Well, that's case management. There's already a case manager, so why should I pay you for that?" "Wait a minute. This is the cost of our delivering these services to make sure that we're prepared to bridge; reasonable and appropriate. You know what? If your case manager

is on the phone to us, that's coordination; we're talking back to somebody at the other end of the line. This has to be acceptable."

They still haven't paid the bill because they're trying to ram it through higher levels of scrutiny that are inappropriate.

1700

Mrs Marland: I was very interested listening to you describe the fact that you have so many fees for your service that are outstanding from the insurance company, and I'm wondering if you can suggest a more direct way of payment, whether the solution is that the money flow directly from—there's a contract here between somebody who buys automobile insurance for their personal protection and the company that provides that protection for a payment of a fee. So there are two parties to the contract, and then there's an MVA, there's a motor vehicle accident, and then all these other different parties come to help the injured individual.

I'm looking at it quite ambivalently, trying to see what would be the best solution, because there are major costs here that all of us end up paying. So I'm just wondering if there's a more direct, more efficient way of handling this. If it flows directly to the insured, would that remove some of the management responsibilities that you have, the case worker has and everybody else has who, by necessity I understand, have to be paid for their time?

Mr Direnfeld: You know what? At this point in time I don't care who they give the money to, as long as they give the money, because I'd be able to get it. There are two issues. One is, they don't pay, so it doesn't matter who you target as the recipient of the payment. So the first thing is, they have to pay.

Second to that, my preference is, if I'm delivering the goods and services, my feeling is, as an independent businessman, I should be paid directly. Now, you have to appreciate I'm in the business of helping persons who are cognitively impaired. They forget things, they lose things. That puts me at risk if I'm going to expect my payment from them. At the end of treatment I'd like to think that all of them would be well enough to be able to forward those cheques on, but they may not be. I have to be assured that the day after tomorrow I'm still in business. I think it's reasonable and appropriate for me to have direct payment and I think that needs to be reflected in the act. I've made some very specific recommendations in terms of amendments on this.

Mr Crozier: Thank you, sir. For the past day or so when we've reviewed this legislation, conflict of interest has been of great concern. For example, would a health care practitioner, a lawyer, be an owner of a firm like yours and then in a position to refer individuals to it?

Mr Direnfeld: I think they can be in that position. That's not the case with our centre, though. We're very careful about conflict of interest issues personally. We only accept referrals from the person's primary health practitioner, their family doctor. That way it makes it one step removed. If your family doctor isn't convinced that you should be coming to us, then we're not going to see you. Under the current legislation, I do have facility with the health practitioners we have to make internal referrals. I can do that, but we never do that, for that very

reason. We have to be perceived as always operating appropriately.

Mr Crozier: So you wouldn't refer within your own office, yet a family practitioner may—and I just throw this out for your comment—refer a patient of theirs to an internist within their office of doctors?

Mr Drenfeld: Correct.

Mr Crozier: But you've chosen not to.

Mr Drenfeld: We find that we're subject to a higher level of scrutiny because there are third-party payors. Why wave a red flag? So it's our choice not to. I think some of the concerns that insurance companies may legitimately have are with the physician-owned physio clinics, where physicians are referring to their own owned physiotherapy clinics and persons are in there longer than the six to 12 weeks that one might expect on a soft tissue injury.

The Vice-Chair: Mr Drenfeld, thank you very much for your presentation today. Have a good day.

MILTON PHYSIOTHERAPY AND SPORTS INJURY CLINIC

The Vice-Chair: The next delegation before the committee is the Milton Physiotherapy and Sports Injury Clinic; Judy Boivin. Hello and welcome.

I know the Chair of the committee, Ted Chudleigh was looking forward to hearing your presentation—I believe he's your representative—but he was pulled away on business and sends his regrets.

Ms Judy Boivin: Let me begin by introducing myself. My name is Judy Boivin. I am a physiotherapist who has owned a private physiotherapy practice in Milton since 1989. It is a relatively small facility, employing two physiotherapists besides myself, and approximately 25% of our caseload is made up of patients who sustained injuries in motor vehicle accidents. However, with the ever-changing auto insurance act over the past six years, this segment of my practice has been an ongoing challenge. It is because I recognize a need for change of the current legislation that I have asked to come before you today.

I would like to share a story with you and, in doing so, highlight issues as they relate to Bill 164 reform. It is a true story of a patient of mine. Her name, for the purpose of this story, will be Joy. Joy is a 50-year-old woman who owns a successful candy store in Milton. Last June, while coming home from her daughter's, she was struck by a drunk driver and her car rolled three times, landing on its roof. Remarkably enough, the worst injury she sustained was a dislocated shoulder. At the emergency department, Joy was appropriately treated by an orthopaedic surgeon who put her in a sling and told her to return to see him next week. It was at this time that he referred her for physiotherapy at a clinic of which he was a part-owner; let's call it clinic P.

Joy was happy to comply with his wishes as she was anxious to get on with her daily activities especially her work at the store. Having only one good arm made it impossible to stock shelves and serve customers. She attended treatment daily at clinic P for the next four months, but despite her efforts, she progressed very slowly.

Initially, the cost of her rehab at clinic P was billed to the extended health benefit company connected to her husband's workplace, but the annual maximum of \$500 was quickly used up. Joy's car insurance company was paying for her income replacement benefits and eventually began picking up the tab for her rehab too. It was now October and the insurance company was concerned about the increasing cost of this claim and requested that she go to the designated assessment centre for evaluation. The recommendation was for continued physiotherapy, but using a more active, hands-on approach.

This is where I come into the story. I first saw Joy in mid-November, some five months after the original injury. She was somewhat weak, but most restricted functionally by her inability to reach to shoulder level. Unfortunately, this far after an injury, research shows us that the tissue has changed in such a way that it becomes more difficult to rehabilitate. We had missed the very important window of time right after an injury when soft tissue is easily remodelled and related disfunctions can be avoided. None the less, by using techniques that are proven effective in dealing with this type of injury, she improved quickly and I'm happy to report Joy was back working in her candy store by mid-December.

So what's the point of this story? Am I telling you this just to prove that I am a competent physiotherapist? No. The point is, I did nothing special in terms of treatment of her injury, nothing more than any other physiotherapist would have done who bases their practice on scientifically proven techniques. Joy's injury was nothing special as far as injuries go, certainly far from catastrophic, but it cost the insurance company six months of daily treatment; I hesitate to call it physiotherapy because in Joy's case, as in many rehab facilities, patients are being treated by unlicensed personnel. The six months of income replacement benefits the insurance company paid out should have been closer to two or three months if she had been properly managed from the outset.

1710

My first concern is this: Referral for profit, as occurred when Joy went to clinic P, not only drives up costs; it very often means inappropriate and ineffective treatment for the patient. Joy knew her orthopaedic surgeon had a financial interest in her having physiotherapy at his clinic, but she wanted to follow his orders as she trusted his judgement.

Joy had the inner drive to get back to work. Imagine how many of those unmotivated individuals are still at clinic P, enjoying their slow recovery and weekly income replacement benefits. As for the orthopaedic surgeon, I think you know why I called his rehab facility clinic P. It stands for profit, and for every referral he makes, whether they really need to go or not, he makes a very good profit. A physiotherapy clinic like mine depends on reputation for referrals. If my treatment is not effective, my referrals will dry up. I think it is plain to see how important these interprofessional checks and balances are.

In speaking to insurance adjusters, I've realized they are also well aware of the problems that exist in these conflict-of-interest situations, but they are often unable to do anything about it, regardless of how blatant it is.

Reforms to Bill 164 have failed to address this huge issue of referral for profit. I urge you to include in your legislation a clear prohibition against referral for profit if you are truly interested in cost-effective treatment. The auto insurance companies need the power to refuse payment when they recognize there is a conflict-of-interest situation, regardless of whether it has gotten to the point of being abusive or not. This protects them and the patient.

You will find articles from several American medical journals in your package that support the claims I have just made in regard to referral for profit. They conclude that lengthier treatment durations and less direct patient care by unlicensed practitioners result in costs being driven up.

Secondly, my story of Joy serves to illustrate the potential problems associated with the designated assessment centres, or DACs. I recognize that the evaluation of treatment plans, costs and outcomes will often be necessary and I feel this is the appropriate framework. I applaud your decision to make this available early into the rehab process so we are not wasting that valuable window of time I referred to earlier. You'll recall Joy wasted five months receiving inadequate treatment. However, since the proposed legislation offers no definition of what reasonable and necessary treatment might be, it is really left open for interpretation and abuse. What's to stop a rehab facility from providing the very least in terms of treatment and billing the very most, even if it is limited to the first 15 treatments?

I propose that the DACs be given very clear guidelines to make the difficult decisions they will be faced with. The health care system, under this legislation, has to strive for cost-effective treatment techniques based on proven outcomes, not just reasonable care. Similarly, the assessment process must be cost-effective, and I question whether an individual practitioner might be just as effective in the cases of non-catastrophic injury as a multidisciplinary team would be. Assembling a competent multidisciplinary team in a small community is quite difficult and costly.

The third and final point I wish to expand upon is the problems surrounding multiple payors. Hopefully, Joy will not sustain any further injuries this year that require physiotherapy. If she does, she won't have any coverage left in her extended health care for physiotherapy. Her \$500 maximum has been spent on her motor vehicle accident injuries. This certainly doesn't seem right.

You can imagine the administrative nightmare multiple payors cause a small office like mine—calling each insurance company to see who covers what and to which limit. Inevitably, one company says the other is responsible and vice versa, and the bill gets sent back and forth, delaying payment as long as possible. My reception staff spends at least 50% of their time on the administration of 25% of our patient population.

I would imagine that, from the insurer's point of view, having more than one possible payor makes them very susceptible to abuse from fraudulent rehab facilities billing them both for the same service.

I strongly urge you to rethink this payment system. I feel there should be a single payor for injuries sustained

in automobile accidents, and that should be the automobile insurance company.

Joy's story is not unlike many others. I hope that in putting my points across in story format, I have not oversimplified the issues, as I feel I am well aware of how complex they really are. But whether we choose to look at it from the patient's perspective, the insurer's perspective or, in my case, the health care provider's perspective, I feel the three issues I've discussed need to be addressed more carefully in this auto insurance legislation: Eliminate referral for profit, clearly define the role of the DACs and go with a single payor.

The commonsense approach would be to eliminate any opportunity for abuse in this system. Although these proposed reforms to Bill 164 will cut down on abuse, it still has left too much room for it to occur. As a physiotherapist, I want to work within a system that makes me strive for excellence. As we all know, nothing's as sweet as a full recovery and being back to work in your own candy shop.

Incidentally, the candy in your package is compliments of Joy. I'd be glad to answer any questions.

The Vice-Chair: Thank you, Ms Boivin. On behalf of the committee, thank you for the candy as well.

Mrs Marland: I'm glad you mentioned the candy, because suddenly everybody was chewing.

Mr Sampson: I'd resist the temptation to say this is one of the sweeter presentations we've had, but it's late in the day and I had to do that.

By the way, this is not the first time I have heard the conflict-of-interest stories. For the last six or seven months, I heard numerous ones. Could you tell me what has been the involvement of either one of the colleges in this particular case at all, if any?

Ms Boivin: You're referring to the College of Physiotherapists as well. We have certainly been communicating with the College of Physicians and Surgeons, as far as I as an independent practitioner know, since the legislation changed in 1994. It has become apparent to us that they really have no intention of doing anything about it at this point in time. It appears it's a nice venue for business opportunity for the physicians. I agree that's where it should be dealt with, but it appears that's not what's happening.

Mr Sampson: As I said to an earlier deputant, one of our dilemmas is, we can choose to deal with it, and we may have to deal with it, because it's a serious cost and a serious problem in the auto plan, but it really goes across the health practitioner industry.

Ms Boivin: Yes, we agree.

Mr Sampson: It also includes, we've heard, various aspects of the legal community.

I think your suggestion here, though, is that you might want to say that the insurance companies have the power to refuse the payment when they recognize there is a conflict. So I gather we'd have to kind of work on what that word "recognize" means. But is that the way to do it? Say, all right, the insurance companies, when they feel there is a conflict here that is having a negative impact on treatment or costs, can stop paying regardless of whether or not they've previously committed to pay? Is that the way to do it, do you think?

Ms Boivin: I believe that's one of the ways, within the reforms of this particular bill, that it can be dealt with. Obviously, there's going to have to be some sort of definition as to what exactly conflict of interest is and what the ownership of rehab facilities is in order to make that information available to the insurance companies, albeit most of them are quite aware of what facilities are in conflict.

Mr Kwinter: Thank you very much for your presentation, and I hope you'll convey to Joy our thanks for the candy.

I am absolutely in agreement with you that any of the parties to the process, whether they be insurers, lawyers, doctors, should not be in a conflict situation or appear to be; no problem with that. I do have a problem with your illustration, because I think you're maligning some people. Regardless of the issue of conflict, the impression that you get is that because the doctor was involved, it was a schlocky operation. I'm sure there are some doctors or whoever who are involved in first-class facilities that are doing their job. Again, I don't condone their involvement because I think it really is a conflict, but I just wanted to make sure that this wasn't a general situation.

Also, I'd like you to address the issue of, regardless of who owns it, if it is not meeting professional standards and it's not doing the job that it should be doing, then your regulatory body should be dealing with it, as I say, regardless of who owns it. Could you comment on that?
1720

Ms Boivin: I would agree, and I think that's what I was trying to bring out about the role of the DACs, because I think they do have a very important role here in that you can't compare physiotherapy in one facility to the next and just automatically assume you're comparing oranges to oranges. I think the DACs, and hopefully the physiotherapists within the DACs, recognize the difference between the quality of physiotherapy that's being received at one facility or the next so that when they are making recommendations about treatment plans, they recognize whether a treatment that's being provided is ineffective or inefficient and then will make the recommendation to pull that person from that facility and move them on to somewhere else.

I agree with you that it's a problem within our own physiotherapy regulatory body that we need to be dealing with, but I think the other issue I tried to allude to in this is that quite often the people working in those facilities are not physiotherapists. The typical scenario we see in the physician-owned rehab facilities is that they have one or possibly two physiotherapists and then for the volume of their work they're paying kinesiologists or athletic therapists or unlicensed personnel to be carrying out the daily treatment.

Ms Lankin: You present a very large problem for the government to try and deal with. I think everyone would acknowledge that there are probably cases like the one you brought forward that are very suspect and there should be a way of getting at that. And if you can't get at it through the regulatory structure, then there's a problem. It seems to me that at the very least, if there is a treatment plan that was assessed and put in place by a physiotherapist in that orthopaed's rehab clinic, then

there's someone who should be responsible for that plan of treatment, even if it's being carried out by someone else. There needs to be some responsibility in the self-regulatory professions, or we don't have a hope of fixing it at a government level.

On the other hand, I've heard many stories like this, and not just with respect to physician ownership of physio clinics, but laboratories and referrals for outpatient tests on labs is another whole area where this conflict comes in, and I suggest it's an area that needs to be looked at.

But for those who are going to try and rip off the system—and I suspect it's the minority, not the norm out there, a minority of practitioners—if they have clinics and you say you can't refer to your own clinic, that's the rule that comes in. It's very easy for me to work it out with you that I refer to your clinic and you refer to mine. So if people are going to rip off, they're going to rip off and you've got to get at the individuals, and I'm not sure the rules, the structural rules, while we should look at them, are going to fix the problem. I think it's investigative and I think it's proving individual action.

My question to you, though, is about the single-payor system. You said that 25% of your clientele are automobile accident victims, and you indicated that in a number of cases your staff are working on going from one insurer to another and it's bouncing back and forth. Could you tell me what percentage of the motor vehicle accident clientele you have actually receive their first benefits from someplace else other than auto insurance policy? What proportion of them would be workplace—

Ms Boivin: You mean their first rehab benefits, like the payment to me?

Ms Lankin: Yes.

Ms Boivin: I would say probably about 25% of those that we're struggling to find out where to send the bill to, and typically it's to the extended health care.

Ms Lankin: The reason I'm interested is because, again, we're coming at this because of the issue of cost of premiums going up and the companies are saying it's going up because of huge rehab costs, and yet all day long we've been hearing about people with legitimate injuries who are being denied treatment costs, rehab costs. Here we hear about the other insurers who are picking up the first, at least, part of the payments. I really wonder what's going on to drive the costs up when you've got all these other factors we should be considering. I'm starting to get to the point where I think we should be calling for a royal commission, Mr Sampson, but I'll hold that recommendation till the end of the hearings.

The Vice-Chair: Ms Boivin, thank you very much for your presentation today. Have a good evening.

MISSISSAUGA PHYSICAL REHABILITATION AND WELLNESS CENTRE

The Vice-Chair: The next delegation is the Mississauga Physical Rehabilitation and Wellness Centre, Dr Stants. Good evening and welcome.

Dr Carlan Stants: My name is Dr Carlan Stants. I would like to thank the standing committee for the oppor-

tunity to speak today with respect to the proposed Insurance Statute Law Amendment Act, 1996, and the amendments to the statutory accident benefits schedule, SABS. As a licensed chiropractor, I am also the owner and clinic director of a multidisciplinary medical-rehabilitation and disability designated assessment centre. I feel that I can provide this committee with a unique perspective on the proposed legislation.

I have spent a substantial portion of my career involved in the physical rehabilitation of claimants who have sustained injuries in motor vehicle accidents. Most recently, since January 1994, my practice has been primarily devoted towards conducting medical rehabilitation and disability assessments on the same population group. In this two-year period, my facility has performed in excess of 600 assessments.

Throughout my career, there has been a plethora of insurance acts and amendments which have frustrated all parties. I would like to congratulate Mr Sampson, the government and the various stakeholders for their involvement in developing this proposed new legislation. It is my opinion that it provides an excellent template for an auto insurance plan that potentially protects the rights of consumers and insurers equally.

The majority of insured individuals readily heal and go on to lead productive lives within six months of being injured in an automobile accident. However, there is a small portion of insured persons, most likely less than 20%, who account for the lion's share of the costs in the system. It has been my experience that the major portion of insurance costs stem from medical and rehabilitation benefits and income replacement benefits. Liberal benefit limits and definitions, coupled with easy access to tort, have encouraged overpayment of benefits, improper treatment and fraud.

The designated assessment centre provides both insured persons and insurers with an effective means of resolving disputes over benefits and indirectly controlling costs. I am pleased to see that this legislation recommends that these centres be maintained. However, in order to ensure their ongoing effectiveness, it is important that the role of each health practitioner group involved in the assessment process be clearly delineated. It is vital that the best qualified health practitioner, licensed as per the Regulated Health Professions Act, provide the required assessment. For example, chiropractic issues should be addressed by chiropractors.

At this time, I would like to propose the following changes to the Insurance Act and the SABS:

(1) Throughout the SABS and the act, the term "medical benefit" is liberally employed. Normally this term is associated with services rendered exclusively by the medical profession. However, in the proposed legislation it is used to encompass all services provided by all health care professionals. In reality, changing this term to "health care benefit" would be a more appropriate and correct application, except where the term is utilized to mean those services rendered exclusively by a medical professional.

(2) In part I, general, under the section "Definitions," the term "impairment" is defined as "a loss or abnormality of a psychological, physiological or anatomical structure or function." However, abnormalities or losses which

manifest themselves solely as symptoms should not qualify and this definition should be amended accordingly. For example, pain is not an impairment.

Further, when discussing impairment it is important that a distinction be made between impairment which is of a temporary nature or is permanent. I would recommend the inclusion of the following definition:

"Permanent impairment" means impairment that has become static or well stabilized with or without treatment and is not likely to remit despite treatment."

This definition is critical in the designated assessment centre process. The reasonableness and necessity of ongoing benefits hinges on whether an impairment continues and whether it is permanent.

1730

(3) In part I, general, under the section "Definitions," no definition of "disability" has been included. I would like to recommend the inclusion of the following definitions:

"Disability" means a decrease in, or the loss or absence of, the capacity of an individual to meet personal, social or occupational demands, or to meet statutory or regulatory requirements.

"Permanent disability" means when the degree of capacity becomes static or well stabilized and is not likely to increase despite continuing use of therapeutic or rehabilitative measures."

(4) In part I, general, under the section "Definitions," insured person, subclause (a)(ii), be amended as follows:

"(ii) is not involved in an accident but suffers substantial psychological or mental injury as a result of an accident in or outside of Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse's dependant."

I feel that without the addition of the word "substantial," individuals will potentially seek benefits for the purposes of secondary gain for insured persons who have sustained only minor injuries.

(5) In part I, general, under the section "Interpretation," section 5, complete inability to carry on normal life, be amended as:

"5. For the purposes of this regulation, a person suffers a complete inability to carry on a normal life as a result of an accident if, and only if, as a result of the accident, the person suffers an impairment that continuously prevents the person from engaging in substantially all of the essential activities in which the person ordinarily engaged before the accident."

The prior definition is too liberal. It would increase the number of insured persons who would qualify for benefits as all activities regardless of how essential or how often the insured person was involved in the activity prior to the accident.

(6) Under part II, income replacement benefit, subsection 8(3) be amended as:

"3. The insured person,

"(i) was entitled at the time of the accident to start work within three months under a legitimate, written contract of employment that was made before the accident, and"

Unfortunately, it has been my experience that this definition is often at the centre of fraudulent claims for income replacement benefits. It is extremely hard to dispute the legitimacy of the written contract of employment that the claimant presents.

(7) Under part II, income replacement benefit, subsection 10(1), calculation of gross income, be amended as:

"10(1) For the purpose of calculating gross income, an insured person who is eligible for an income replacement benefit under paragraph 1 or 2 of subsection [cross reference: section on who is eligible] (1) shall designate one of the following time periods:

"1. The 12 weeks before the accident, if the person was employed at the time of the accident.

"2. The insured person's immediately prior taxation year."

While there are limits on the extent of the insured person's income replacement benefit, the problem arises more specifically with self-employed individuals. If, for example, a commission salesperson has an exceptional month, he or she would then potentially become eligible for a benefit in excess of what they would normally receive. A 12-week period would also be more representative of an insured person's income if they were a seasonal worker or had been employed for a full year before the accident. Using an insured person's taxation year would simplify the processing of claims with respect to a one-year determination, rather than the immediate prior 12 months.

(8) Under part II, income replacement benefit, section 12, temporary return to employment, be amended as:

"12. A person who has sustained a disability and is receiving an income replacement benefit under this part may return to or start an employment at any time during the 104 weeks following the onset of the accident in respect of which the benefit is paid without affecting his or her entitlement to resume receiving benefits under this part if, as a result of the accident, he or she is unable to continue in the employment."

It is important to stress that an insured person may not in fact be disabled at the time of the accident and may not sustain a disability until an unspecified time after the accident. The current legislation only serves to extend the period over which an individual may seek benefits and serves to promote secondary gain issues.

(9) Under part VIII, reimbursements, section 28, who is eligible, be amended as:

"If an insured person sustains a catastrophic impairment as a result of an accident, the following individuals are entitled to an allowance that is reasonable having regard to all of the circumstances for expenses actually incurred in visiting the insured person during his or her treatment or recovery:"

Amending this benefit would preclude individuals from being reimbursed for travel expenses for an insured individual who has sustained a minor impairment.

(10) Under part VIII, reimbursements, section 29, who is eligible for expense, be amended as:

"29(1) The insurer shall pay an insured person who sustains a disability as a result of the accident for additional, reasonable and necessary expenses incurred by or on behalf of the insured person in respect of house-

keeping and home maintenance services if the insured person suffers a substantial inability to carry out the essential housekeeping and home maintenance services that he or she normally performed before the accident."

If an insured person is unable to complete an essential task then the correct term to employ is "disability" and not "impairment."

(11) Under part VIII, "Reimbursements," section 31, "Costs for the services of a case manager," be amended as:

"31. The insurer shall pay an insured person who has sustained a catastrophic impairment and is receiving health care, rehabilitation or attendant care benefits for all reasonable and necessary expenses incurred for the service provided by a case manager related to the coordination of health care, rehabilitation or attendant care services."

Case management costs typically arise from the insurer's inability to effectively manage claims. It is traditionally a function of too much work and not enough staff to handle the claims. Case management beyond this level tends to result from service providers having case managers who coordinate rehabilitation and health care services in a manner that invariably leads to unnecessary and unreasonable care with resulting higher costs. With the exception of catastrophic impairment, case management should be at the sole discretion of the insurer and should not be an insured benefit.

(12) Under part VIII, "Reimbursements," subsection 32(1), "Cost of examinations," be amended as:

"32(1) The insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person in obtaining and attending an examination or assessment or in obtaining a certificate, report or treatment plan for the purposes of this regulation, including,"

There are service providers who conduct a lot of unreasonable and unnecessary tests and assessments in an effort to justify reasonable and unnecessary therapies. It is recommended that the words "and necessary" be added to the definition to discourage this practice.

(13) Under part X, "Procedures for Claiming Benefits," subsection 42(6), "Minimum expense for physiotherapy and chiropractic treatment," be amended as:

"(6) Despite subsection (5), if the insured person submits a treatment plan for services rendered by a physiotherapist or a chiropractor, the insurer during the first six months after the accident and the initiation of the service, shall pay an amount for,

"a) the reasonable incurred costs for eight continuous weeks of physiotherapy and/or chiropractic services."

I am not aware of any place in the scientific literature that justifies 15 sessions of physiotherapy and/or chiropractic care being sufficient to resolve a soft-tissue injury. However, there is plenty of evidence to justify a time frame of eight continuous weeks. The expenses incurred should be reasonable.

(14) Under part X, "Procedures for Claiming Benefits," subsection 42(9), "Report of assessment centre," be amended as:

"(9) Subject to the determination of a dispute relating to the expense in accordance with sections 279 to 283 of the Insurance Act,

"(a) during the dispute resolution process, subject to the report from the designated assessment centre, the insurer shall pay for all reasonable and necessary expenses incurred by the insured person for treatment for an additional eight-week period for to a limit of \$3,000."

During the dispute resolving period, it is important that insured persons have access to reasonable and necessary care if it is required. However, the insurer must be protected from service providers who unreasonably abuse the system.

(15) Under part X, "Procedures for Claiming Benefits," section 47, "Suspension of payment for non-compliance" be amended as:

"47(1) If an insured person fails or refuses to submit to an examination requested by the insurer under section [cross reference: previous section insurer examination], the insurer then may request the claimant to attend at a designated assessment centre."

The role of the designated assessment centre is to resolve disputes between insured persons and insurers. If based on an insurer's examination the insurer can terminate benefits the role of the designated centres is effectively reduced.

(16) Under part X, "Procedures for Claiming Benefits": clause 48(2)(b), "Duty to provide designated assessment centre with information," be amended as:

"(b) the insured person shall submit to any reasonable physical, functional, psychological and mental examination requested by the persons or persons who conduct the assessment."

This is in keeping with the definition of "impairment." 1740

(17) Under part XI, "Designated Assessment Centres": subsections 59(4) and (5) be amended as:

"(4) The designated assessment centre must begin assessment within three weeks of receiving approval from the insurer of the assessment plan."

"(5) If the designated assessment centre is unable to begin the assessment within three weeks of receiving approval of the assessment plan, the insured person or insurer may request another qualified designated assessment centre that is next to the residence of the insured person to perform the assessment."

Often, the request for assessment is not complete from the insurer and time is spent in clarifying the rest and obtaining additional information so the appropriate assessment is conducted. Once the request is complete, the insurer is provided with a cost of assessment and a declaration on potential conflict of interests. Only once these issues are mutually resolved can the assessment be scheduled. Given schedules for the insured person and the individuals conducting the assessment, a three-week period is not unreasonable.

(18) Under part XII, "Responsibility to Obtain Treatment, Participate in Rehabilitation and Seek Employment": subsection 61(2), "Description of duty re treatment and rehabilitation" be amended as:

"1. The insured person,

"i. is able and qualified to perform the substantial and essential tasks of the employment, or

"ii. would be able and qualified to perform the substantial and essential task of the employment if the insured

person had not refused to obtain treatment or participate in rehabilitation that was reasonable and necessary to permit the person to engage in the employment."

(19) Under part XII, "Responsibility to Obtain Treatment, Participate in Rehabilitation and Seek Employment": subsection 61(3), "When duty does not apply," be amended as:

"(3) Subsection (1) does not apply if compliance with subsection (1) would be detrimental to the insured person's treatment or recovery as determined by assessment at a designated assessment centre."

Without further clarification as to who can certify that the insured person is unfit to participate in therapy, a loophole has been created for the insured person to refuse to attend for treatment and still be eligible for income replacement benefits.

In conclusion, I would like to thank the standing committee for providing me with the opportunity to comment today. I trust that my recommendations will be considered for inclusion in the proposed legislation.

The Vice-Chair: Thank you, Dr Stants for a very thorough presentation. Unfortunately, the time has now expired. Thank you. Have a good evening.

CANADIAN CAR AND TRUCK RENTAL ASSOCIATION

The Vice-Chair: The next group before the standing committee is the association of Canadian car rental operators, Mr Kenmir and friends.

Mr Sid Kenmir: My name is Sid Kenmir. I am the executive director of the Canadian Car and Truck Rental Association. I would like to take a minute to introduce my associates from the Canadian Car and Truck Rental Association: David Campbell, Farouk Vevaina and Harry Edgar. Thank you for the opportunity to appear before the committee.

The Canadian Car and Truck Rental Association is the major industry association for the car and truck rental operators. I speak on behalf of the daily rental companies in Ontario ranging from the large multinational operations to the small single-store independent operators.

The car and truck rental industry currently employs about 7,000 people. Our industry is one of the major purchasers of automobiles and trucks, buying and insuring over 80,000 vehicles in Ontario annually. The cost to insure our vehicles is our second-largest cost of doing business, and the cost of auto insurance for our industry has increased well over 25% under Bill 164. Our industry now suffers from the combined problems of continued cost increases and a very limited number of automobile insurers that are willing to underwrite our industry members. These insurance problems have put some smaller operators out of business, and they continue to threaten the survival of the entire industry.

In our review of this proposal, we believe that the basic problems with auto insurance in Ontario have not been effectively addressed. The costs of automobile insurance under this legislation will not go down, the problems of fraud and abuse have not been addressed and, within a few years, the issue of auto insurance will have to be revisited by the government.

Our industry was victimized under prior legislation due to the combination of the ease of renting an automobile and the attractive schedule of accident benefits under Bill 164. In our industry's experience, it was the low-income earners and the unemployed who most frequently claimed accident benefits. The legislation under discussion today does little to reduce the opportunities for fraud and abuse from these groups.

Our industry is extremely concerned about the provision permitting accident victims the right to sue for economic losses. While we do not oppose this provision in principle, we believe that its introduction in the manner proposed in the draft will only perpetuate fraud and bring about nuisance claims that are sought to be eliminated by this bill.

Our industry believes, because of the large numbers of vehicles that we have on the roads of Ontario, that our industry will be the focus of a large number of tort actions to recover economic losses. Accordingly, our industry members will pay substantially to investigate and defend these claims. We urge the government to seriously consider a threshold amount, not a deductible, to be applied before permitting any access to tort.

The car and truck rental industry is concerned that this proposed legislation promises to reduce the cost of automobile insurance, yet it does nothing to address the issue of road safety.

Our industry's suggestion is to make each driver in Ontario purchase a policy of automobile insurance that would be primary in the event of an accident, as part of the cost of being licensed to operate a motor vehicle. If the objective of this legislation is to make Ontario's roads safer, the responsibility for any claims should rest with the driver, not the vehicle owner. Requiring licensed drivers to have this policy of automobile insurance will more effectively address the concerns regarding uninsured vehicles than the fines proposed in this legislation.

According to the 1994 Ontario Road Safety Report, the province of Ontario had seven million drivers and six million vehicle owners that year. Ontario's present insurance laws require that the vehicle owner be liable for the cost of insurance, and be liable for the negligence of the vehicle driver. Given that some percentage of vehicles on Ontario's roads are uninsured, perhaps five million vehicle owners in Ontario are paying for the accidents of seven million drivers. The cost of automobile insurance can be reduced if we increase the number of people who are contributing to the overall pool of premiums. Responsibility for the costs of the accidents should rest with the individual that can most directly affect road safety, that being the driver.

A third area of concern for this proposed legislation is the low levels of deductibles for non-economic losses. We ask for an increase in the deductibles for non-economic losses to restrict the access to the courts. We propose that the deductibles be raised to \$25,000 for general damages and \$10,000 for Family Law Act claims, as access to the legal system is a significant factor in increasing the overall cost of automobile insurance.

Finally, the legislation does nothing to address the outdated daily transportation limits specified under section 7.4.4 of the Ontario auto policy, known as loss of

use by theft. In the late 1980s, the limit for the amount that we can charge for our services was raised to \$30 per day, taxes included. In 1996, some eight years later, our industry costs have increased dramatically; it costs our industry almost \$40 per day, before taxes, to offer a vehicle for rent. Frequently, our customers are asked to pay the shortfall when their vehicle is stolen.

1750

If the intention of the government is to update Ontario's insurance laws, then our industry asks that all areas of the policy be brought into 1996 levels. Some members of the insurance industry have voluntarily increased the levels of their OEF #20 loss-of-use endorsements, and we ask that the government do their part. Our ability to earn a living should not be legislated at 1988 levels. We ask that the limits of the loss-of-use-by-theft section under the auto policy be raised to \$45 per day to address the cost of making a vehicle available for rent.

In conclusion, the car and truck rental industry is concerned that the legislation is not going to solve the problems with automobile insurance in Ontario. The government suggested that its reforms would bring much-needed stability to the insurance industry. What is tabled here is inadequate. If the government is intending to introduce more reforms, we ask that you do it quickly.

Our industry is gravely concerned with allowing tort access provisions for economic loss and the long-term cost implications of allowing this tort access. While the provisions of Ontario's automobile insurance are being revised, our industry suggests that we enhance road safety and put the onus for cost increases on the person who can most directly influence the costs: the driver.

I appreciate the opportunity to appear before this committee and I thank you for your consideration. We are now willing to entertain any questions from the committee members.

Mr Crozier: Thank you, sir, for your deputation. I note that you're obviously not very happy with the 25% increase in rates under Bill 164. On your comments about, with this proposal, auto insurance rates not going down, we've learned that in a like two-year period they will probably go up anywhere from 14% to 16% to 18% in the next two years, so we do have some work to do.

I was interested in your proposal about insuring drivers. It's the first I've heard of that and I think it's rather unique. I'm not so sure I agree with it, but I wondered what prompted you to make this suggestion and if, in making it, you'd done any research into it. Have you talked to insurance companies about this? Have you done any research of your own when it comes to insuring drivers?

Mr Harry Edgar: No, we haven't really talked to too many insurers in Ontario, but it's not a new proposition in North America. In fact, it's quite old. Unfortunately, it has the spectre of being government-run insurance, which scares off a lot of people, but it doesn't have to be. There have been other jurisdictions in North America, I think North Carolina in the States, that have entertained licensing drivers and farming it out to private insurers and making the driver responsible, as opposed to the owner.

Mr Crozier: Yes. Certainly when you think of it for some insured services, the CAA membership that I have insures me and not the car for the services they provide. In other words, I can be driving somebody else's car, and if I get a flat tire I call the CAA and it's I who am insured. So it is kind of interesting. If you had any information, just for my own interest, I'd be pleased to read some of it.

Mr Winter: I was interested in your concern about the fact that the limit for reimbursement for a stolen car claim on a rented car is \$30, and it's costing you \$45. What happens if your members are approached by a person who is trying to rent a car under that provision and says, "Well, my insurance company only pays \$30"? Do you tell him he's got to pay the difference, or too bad, or do you let him have the car?

Mr David Campbell: There are a number of options. The first option is that we can say, "We do have a car that's available for that price," and typically that's a smaller car such as a Geo Metro or Suzuki Swift. If you're not happy with that size of car, which is basically a subcompact, then the option is, "Well, we do have other cars which are available, but unfortunately there's going to be a price difference." So we would be asking that person to pay the difference. If they say, "I need a Lincoln or a Cadillac," we can't offer that kind of car for \$30.

Mr Silipo: When someone rents a car and they have insurance on their car that they own, it's possible for them to use, depending on the current coverage they have, that insurance so as not to have to purchase insurance through the car rental agency. Do you have any sense statistically as to what proportion of people who rent cars use that route as opposed to purchasing insurance along with the rental of the car?

Mr Campbell: There are some members in our industry who specialize in dealing with insurance replacement customers, so in that case it can be 50% to 80%, but as an industry as a whole we're dealing with people who need cars because theirs is in for repair, tourists, people travelling on business, government employees. On the whole, my guess is that we're looking somewhere in the 30% to 50% range.

Mr Silipo: Sorry, 30% to 50% which are—

Mr Campbell: That 30% to 50% of the people have their own insurance which can apply, in the big picture.

Mr Silipo: Would it get at least some way towards what you're suggesting here if that was something that was promoted more, used more as an alternative? I tell you frankly, in the experience that I've had in renting a car, I haven't seen the car rental operator encourage me to use my own insurance. I just want to put that in front of you and get your reaction. It seems to me the attitude I've seen—I may be wrong and it may not be typical—is that there is some benefit to the car rental agency to actually have me purchase the insurance that goes with the rental fee for the car, which sometimes, depending on the rates and specials etc, may end up costing as much as the rental of the car itself for the day.

Mr Campbell: The problem that we have is that as an industry it's costing us a lot of money to put a car available for rent, and we're not necessarily getting the money back on the pure rate portion. I think what you're

referring to more is in terms of your having collision coverage or comprehensive coverage that would cover the rental car. Our industry's concern is that we're talking about liability for other people's injuries, because that's a definite cost to us as well.

Mr Ford: Welcome here today, gentlemen. It's nice to talk to some people who have the inside information on what goes on in some of these businesses. A question I have is, what suggestion do you have on how to reduce the cost of collision repair? Are there opportunities for fraud and abuse in collision repair that can be addressed through this legislation?

Mr Edgar: There is certainly opportunity for fraud in collision repairs. No, we're at a loss as to how to reduce legitimate collision repairs. The manufacturers are making increasingly sophisticated cars out of increasingly expensive equipment and the cost of repairs is just skyrocketing. Legitimate repairs alone cost a lot. You add the potential of fraud and it just multiplies.

Mr Ford: I realize what you're saying, because I've had people I knew who were in that business. People bring back their cars and certain things have disappeared or been exchanged and all kinds of nonsense. I just wondered; you're probably very familiar with that type of thing, or maybe you've been very fortunate and it hasn't happened to you.

Mr Edgar: We encourage that the repairs be made in legitimate dealerships or manufacturer-approved shops. That keeps us from paying for an entire door that turns out to be partially cardboard and so on and so forth.

1800

Mr Ford: How long do you usually keep a car?

Mr Edgar: Usually six months; maybe a year.

Mr Ford: Yes, I noticed some of the larger firms kept them much shorter times.

Mr Edgar: It depends on the operator. Six months to year, sometimes two at the most. At that point in time the cost of maintaining it begins to overtake the cost of—

Mr Ford: If you have any ideas, we'd like to know about them. You could send them to us, on these bases, okay? Thank you.

The Vice-Chair: Thank you very much for your presentation today. Have a good evening.

STEPHEN MALACH

The Vice-Chair: Next is Mr Stephen Malach.

Mr Stephen Malach: Good afternoon. My name is Stephen Malach. I have with me my associate, Ivan Luxenberg. I'll be making the presentation.

I'm a lawyer who has been practising in this field for 27 years. The bulk of my practice today involves cases at the Ontario Insurance Commission. You could do me a great favour by leaving the bill the way it is, because if you do, the number of cases that will be assigned to me will probably go up 25%. It doesn't matter to me what you do with this legislation. In our practice we have a full caseload, we've always had a full caseload and we always will have a full caseload. I have been spending 90% of my time at the Ontario Insurance Commission. I am chairman of the bar dispute resolution group forum, sometimes called the Council Forum at the insurance

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A third area of concern for this proposed legislation is the low levels of deductibles for non-economic losses. We ask for an increase in the deductibles for non-economic losses to restrict the access to the courts. We propose that the deductibles be raised to \$25,000 for general damages and \$10,000 for Family Law Act claims, as access to the legal system is a significant factor in increasing the overall cost of automobile insurance.

Finally, the legislation does nothing to address the outdated daily transportation limits specified under section 7.4.4 of the Ontario auto policy, known as loss of

use by theft. In the late 1980s, the limit for the amount that we can charge for our services was raised to \$30 per day, taxes included. In 1996, some eight years later, our industry costs have increased dramatically; it costs our industry almost \$40 per day, before taxes, to offer a vehicle for rent. Frequently, our customers are asked to pay the shortfall when their vehicle is stolen.

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If the intention of the government is to update Ontario's insurance laws, then our industry asks that all areas of the policy be brought into 1996 levels. Some members of the insurance industry have voluntarily increased the levels of their OEF #20 loss-of-use endorsements, and we ask that the government do their part. Our ability to earn a living should not be legislated at 1988 levels. We ask that the limits of the loss-of-use-by-theft section under the auto policy be raised to \$45 per day to address the cost of making a vehicle available for rent.

In conclusion, the car and truck rental industry is concerned that the legislation is not going to solve the problems with automobile insurance in Ontario. The government suggested that its reforms would bring much-needed stability to the insurance industry. What is tabled here is inadequate. If the government is intending to introduce more reforms, we ask that you do it quickly.

Our industry is gravely concerned with allowing tort access provisions for economic loss and the long-term cost implications of allowing this tort access. While the provisions of Ontario's automobile insurance are being revised, our industry suggests that we enhance road safety and put the onus for cost increases on the person who can most directly influence the costs: the driver.

I appreciate the opportunity to appear before this committee and I thank you for your consideration. We are now willing to entertain any questions from the committee members.

Mr Crozier: Thank you, sir, for your deputation. I note that you're obviously not very happy with the 25% increase in rates under Bill 164. On your comments about, with this proposal, auto insurance rates not going down, we've learned that in a like two-year period they will probably go up anywhere from 14% to 16% to 18% in the next two years, so we do have some work to do.

I was interested in your proposal about insuring drivers. It's the first I've heard of that and I think it's rather unique. I'm not so sure I agree with it, but I wondered what prompted you to make this suggestion and if, in making it, you'd done any research into it. Have you talked to insurance companies about this? Have you done any research of your own when it comes to insuring drivers?

Mr Harry Edgar: No, we haven't really talked to too many insurers in Ontario, but it's not a new proposition in North America. In fact, it's quite old. Unfortunately, it has the spectre of being government-run insurance, which scares off a lot of people, but it doesn't have to be. There have been other jurisdictions in North America, I think North Carolina in the States, that have entertained licensing drivers and farming it out to private insurers and making the driver responsible, as opposed to the owner.

Mr Crozier: Yes. Certainly when you think of it for some insured services, the CAA membership that I have insures me and not the car for the services they provide. In other words, I can be driving somebody else's car, and if I get a flat tire I call the CAA and it's I who am insured. So it is kind of interesting. If you had any information, just for my own interest, I'd be pleased to read some of it.

Mr Kwinter: I was interested in your concern about the fact that the limit for reimbursement for a stolen car claim on a rented car is \$30, and it's costing you \$45. What happens if your members are approached by a person who is trying to rent a car under that provision and says, "Well, my insurance company only pays \$30"? Do you tell him he's got to pay the difference, or too bad, or do you let him have the car?

Mr David Campbell: There are a number of options. The first option is that we can say, "We do have a car that's available for that price," and typically that's a smaller car such as a Geo Metro or Suzuki Swift. If you're not happy with that size of car, which is basically a subcompact, then the option is, "Well, we do have other cars which are available, but unfortunately there's going to be a price difference." So we would be asking that person to pay the difference. If they say, "I need a Lincoln or a Cadillac," we can't offer that kind of car for \$30.

Mr Silipo: When someone rents a car and they have insurance on their car that they own, it's possible for them to use, depending on the current coverage they have, that insurance so as not to have to purchase insurance through the car rental agency. Do you have any sense statistically as to what proportion of people who rent cars use that route as opposed to purchasing insurance along with the rental of the car?

Mr Campbell: There are some members in our industry who specialize in dealing with insurance replacement customers, so in that case it can be 50% to 80%, but as an industry as a whole we're dealing with people who need cars because theirs is in for repair, tourists, people travelling on business, government employees. On the whole, my guess is that we're looking somewhere in the 30% to 50% range.

Mr Silipo: Sorry, 30% to 50% which are—

Mr Campbell: That 30% to 50% of the people have their own insurance which can apply, in the big picture.

Mr Silipo: Would it get at least some way towards what you're suggesting here if that was something that was promoted more, used more as an alternative? I tell you frankly, in the experience that I've had in renting a car, I haven't seen the car rental operator encourage me to use my own insurance. I just want to put that in front of you and get your reaction. It seems to me the attitude I've seen—I may be wrong and it may not be typical—is that there is some benefit to the car rental agency to actually have me purchase the insurance that goes with the rental fee for the car, which sometimes, depending on the rates and specials etc, may end up costing as much as the rental of the car itself for the day.

Mr Campbell: The problem that we have is that as an industry it's costing us a lot of money to put a car available for rent, and we're not necessarily getting the money back on the pure rate portion. I think what you're

referring to more is in terms of your having collision coverage or comprehensive coverage that would cover the rental car. Our industry's concern is that we're talking about liability for other people's injuries, because that's a definite cost to us as well.

Mr Ford: Welcome here today, gentlemen. It's nice to talk to some people who have the inside information on what goes on in some of these businesses. A question I have is, what suggestion do you have on how to reduce the cost of collision repair? Are there opportunities for fraud and abuse in collision repair that can be addressed through this legislation?

Mr Edgar: There is certainly opportunity for fraud in collision repairs. No, we're at a loss as to how to reduce legitimate collision repairs. The manufacturers are making increasingly sophisticated cars out of increasingly expensive equipment and the cost of repairs is just skyrocketing. Legitimate repairs alone cost a lot. You add the potential of fraud and it just multiplies.

Mr Ford: I realize what you're saying, because I've had people I knew who were in that business. People bring back their cars and certain things have disappeared or been exchanged and all kinds of nonsense. I just wondered; you're probably very familiar with that type of thing, or maybe you've been very fortunate and it hasn't happened to you.

Mr Edgar: We encourage that the repairs be made in legitimate dealerships or manufacturer-approved shops. That keeps us from paying for an entire door that turns out to be partially cardboard and so on and so forth.

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Mr Ford: How long do you usually keep a car?

Mr Edgar: Usually six months; maybe a year.

Mr Ford: Yes, I noticed some of the larger firms kept them much shorter times.

Mr Edgar: It depends on the operator. Six months to year, sometimes two at the most. At that point in time the cost of maintaining it begins to overtake the cost of—

Mr Ford: If you have any ideas, we'd like to know about them. You could send them to us, on these bases, okay? Thank you.

The Vice-Chair: Thank you very much for your presentation today. Have a good evening.

STEPHEN MALACH

The Vice-Chair: Next is Mr Stephen Malach.

Mr Stephen Malach: Good afternoon. My name is Stephen Malach. I have with me my associate, Ivan Luxenberg. I'll be making the presentation.

I'm a lawyer who has been practising in this field for 27 years. The bulk of my practice today involves cases at the Ontario Insurance Commission. You could do me a great favour by leaving the bill the way it is, because if you do, the number of cases that will be assigned to me will probably go up 25%. It doesn't matter to me what you do with this legislation. In our practice we have a full caseload, we've always had a full caseload and we always will have a full caseload. I have been spending 90% of my time at the Ontario Insurance Commission. I am chairman of the bar dispute resolution group forum, sometimes called the Council Forum at the insurance

commission. I know what this is about. There probably are few people who know more about this than I do because I live this, day in and day out, and I've been living this for all of my professional career.

Now, I was sitting and listening to the last deputation and almost had a stroke when he suggested that you raise the deductible for not-at-fault, innocent people and instead give them an extra \$15 a day for car rental. That's a good idea. The poor person who's not at fault, who has fractures and surgery, let's give him nothing, but let's give him another \$15 a day for car rental. What a tremendous idea.

The first thing that ought to be done with this is, someone has to look at controlling the cost of medical and rehabilitation expenses. This new SABS, your new statutory acts and benefits schedule, does nothing, absolutely zero, zilch, to do that. By simply creating a two-tiered system and allowing the non-catastrophically injured person only \$75,000, that doesn't help. No one will be very happy if every person who has a minor neck injury spends \$75,000 on medical and rehabilitation expenses. You've done nothing in this schedule to control that.

Why do you think there's a rehab clinic on every corner? Rehab clinics are opening up on every corner because those people make profit. If you compare the number of rehab clinics that have failed that have opened in the last five years to the same rate of business failure at other businesses, you'll get the shock of your lives. There's extraordinary profit in running these clinics, and of the people who come before you, everyone has their self-interest that they're pursuing. They want to get more and more business for their clinics and preserve more and more of their business.

But what's happened since June of 1990 in the area of medical and rehabilitation expenses? The chiropractor who in June 1990 charged \$26 a treatment now charges \$35 or \$45 or even \$60, and that's coming out of this plan and that's where people's premium dollars are going. OHIP used to pay physiotherapy charges of \$11.90 per treatment. Then why are the bills that I deal with every day approaching \$65 per treatment? Where is the extra \$50 per treatment going? Why haven't you addressed that? This is money that's going down the drain.

When I spoke to the reporter from the Star today I said, "It's being pissed away," and he said, "Is that what you're going to tell this committee?" Yes. That's exactly what I'm going to tell you. Money is being pissed away down the drain on medical and rehabilitation expenses, and you haven't addressed it. If you can save some of the money on this side of the ledger, maybe you'll have money left to pay the not-at-fault accident victim more than 85% of his net loss and maybe he won't have to bear a \$15,000 deductible.

So how do you control that? Let's have a medical expenses and rehabilitation expenses schedule. You have private plans. Does your private plan let you spend \$1 million in massage every year? Of course it doesn't. There's a maximum provided. I'm not suggesting that you put a maximum on medical expenses, although you've put a \$75,000 maximum. What I'm suggesting to you is to address the per treatment cost, and you haven't done that. You have addressed the duration of the

benefits, but you're forgetting the per-treatment cost, and I assure you, I bet my reputation on it, that if you don't do something about this and create such a schedule, the major problem for insurers when this is passed will soon become the control of medical expenses on a per-treatment cost basis because there's absolutely no control. You wouldn't stand for it if you were the committee for the Ministry of Health. Why are you standing for it now?

Moving on through the schedule, non-earner benefits: Why are you paying a non-earner benefit, \$185 weekly, starting in the period 27 weeks post-accident? Why are you doing that? That's giving the person a form of general damages. Look how you're treating the wage earner. The wage earner only gets 85% of his income loss if he's not at fault, \$400 of it under accident benefits and the balance under tort, to the extent of 85% of his net income. The poor guy who has two fractured femurs and a fractured hip, who was hit by a driver while he was a pedestrian, you're making him lose 15% of his net income. But some person who wasn't working, you're going to give him a benefit of \$185 weekly. Why are you doing that? He's not out of pocket.

Mr Sampson, I thought you said in your comments that this was a schedule that provided for actual expense, actual loss. The non-earner doesn't have an actual loss. Why are you preferring the non-earner to the poor wage earner? You're not giving the bonus of \$185 weekly to the wage earner. Take it out of this schedule. Free up some money. You said, Mr Sampson, that this is a fine balancing act. You said there's only a finite amount of money available. If we pay it under no-fault, we can't pay it out of tort.

I'm here to tell you that there's waste in this no-fault benefit schedule, in your statutory accident benefits schedule. Let's get rid of it. Let's pay actual losses. Let's pay true losses. Let's not allow overcharging or overbilling. Let's cut it. Let's make it efficient. Then there'll be more money left to reimburse the poor not-at-fault person who is going to be out of pocket. He's going to lose \$15,000 off his general damages and he's going to lose 15% of his net income even though he's not at fault. How can that be a fair system? Not to speak of the family of the person who's killed in the accident. There's nothing in your legislation to award pecuniary loss to those people, probably because you don't have enough money left. Curb the benefits in this schedule so there's no abuse, so there's no overpayment.

In the case of income replacement benefits, explain to me why you're going to pay such benefits to a person who's on unemployment insurance. Unemployment insurance, paid by the federal government, is a contributory plan. Everybody pays into unemployment insurance. If a person is receiving unemployment insurance and he has an accident, he will qualify for 15 weeks of sick benefits from unemployment insurance. So great, you've devised a plan that you're going to pay him under the auto plan. That money will be deducted from his unemployment insurance. Explain that to me. Why are we finding new people to pay who are already getting payment somewhere else? That makes no sense to me.

Why are you providing benefits for life, if he qualifies, to a person receiving unemployment insurance at the time

of an accident? The poor guy whose benefits ran out last week gets no income replacement benefit. But if he's still collecting unemployment insurance, you're going to give him an income replacement benefit for life, for a longer period of time than he even would have collected the unemployment insurance, because as we know, there's a limit to the number of weeks during which you qualify for unemployment insurance. Why wouldn't you at least limit it to the same number of weeks that he would have collected unemployment insurance? Why do you allow him to claim beyond that? He's coming out ahead of the game. The wage earner loses 15% of his net income if he's not at fault. The person who's on unemployment insurance gets a benefit that he would never get if he wasn't lucky enough to be in a car accident.

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I just don't understand why we're finding new ways to pay money to people who shouldn't qualify. We're expanding the number of people here rather than contracting it. Rather than motivating people to go back to work, we're trying to give people benefits. So why would they work? There's all kinds of abuse in these cases.

Transportation expense: You have a system where nobody recovers 100%—even the not-at-fault victim, subject to the deductible and losing 15% of his net income—yet somebody drives their car to physiotherapy 10 blocks away and you're going to pay this person 15 cents a kilometre. Explain that to me. Why isn't there a restriction on the transportation expenses? Why don't we allow nothing for each trip unless it's more than 50 kilometres? Isn't it better to spread the deductible aspect of the auto compensation system to everybody? Would you rather give a person 15 cents a kilometre to go 10 blocks and then hit the guy with the broken hip with the big deductible and not give him all his earnings back?

I see great abuse in the transportation expense claims. Plus, if that's not bad enough, the cost of administering them is impossible. It costs more to have the clerk tabulate the 15 cents per kilometre for the 10 blocks than the 15 cents per kilometre that you're paying. I urge you, in your transportation expense schedule, that no one should recover any amount for the first 50 kilometres travelled on each trip.

Caregiver benefits: You've changed those. Instead of just getting \$250 a week if you have one child or one person cared for, you're going to pay them for "the reasonable expenses incurred in caring for a person in need of care." Good change, but you know what's going to happen? It's already happening. The lady has a child. She cares for the child. Now her husband will care for the child or her mother-in-law will care for the child or her daughter will care for the child, and they will all submit a bill for it and want to be paid. That's what's going to happen. The arbitration decisions are clear: They'll award money for people who give care services under OMPP.

My suggestion to you is that you go back to the OMPP provision in clause 7(1)(a). Allow payments for family members who give care but only if they've lost some income, to the same maximums that you've set out. Otherwise, believe me, every single caregiving case will

have father and sister and mother-in-law and mother and daughter; everyone's clock will be running. There will be claims paid and all the money will be used up and the premiums will go up for no good reason because you forgot to control the other family members. People are ingenious when it comes to dreaming up ways to get around regulations to try to get money, and the till keeps churning away and the bell keeps ringing and all the money's used up and then we don't have enough money to pay the poor guy who's really hurt.

Case management: No control. Tell me, if you have a soft-tissue injury to your neck, do you really need a professional person to make your appointments for you? Funny, you manage to make your own appointments if you have a heart attack. Funny, you manage to make your own appointments if you have warts on your foot. All of a sudden, every person who's in an accident is an idiot and he needs someone to arrange all of his appointments? You've given no control. You say that everyone is entitled to receive payment for reasonable and necessary expenses for a case manager. So the case manager says, "Oh yeah, he needs me." My goodness, I'll make my law clerk a case manager. Every file I have, we'll send in a bill to the insurer. What a great system. I can make more money than I make now if you allow that to happen. You must control case management. There should be an amendment to section 42 so that there will be DACs for case management.

Suicides: What happened to the suicide exclusion? A guy puts two cement blocks in his front seat and chains himself to it and drives down the ramp into the river and kills himself, and I have to defend a claim for the death benefit claims. It's alleged that those claims are valid death benefit claims because he happened to be in a car. So we have people committing suicide left and right, and all of their relatives then want to make claims for death benefits and funeral expenses. Surely there ought to be an exclusion covering suicides. What about the person who intentionally injures himself to claim benefits? You haven't excluded that either. There is a great deal of abuse in this system. I don't have all the answers, but I have some of the answers. I urge you to read my brief and to exclude these things from the SABS.

Changes that are necessary at the Ontario Insurance Commission: There is absolutely no good reason why there should be neutral evaluation at the insurance commission. The present system of mediation is such that it works extremely well. High percentages of cases are settled. If you introduce neutral evaluation following mediation, what you'll find is that fewer cases will settle at mediation, because people will say, "Hey, there's another step; let's try that." Besides, in our system, if mediation fails and a person proceeds to arbitration at the insurance commission, they will go through a pre-hearing. At that pre-hearing, it's almost the same as neutral evaluation. An arbitrator will give you their view as to what will happen if you proceed. Many cases settle after pre-hearing. If the case goes to the court system, there will be a pre-trial conference and a judge will give his view as to what would happen, and many cases will settle that way. There will be no more settlements if you intro-

duce neutral evaluation. You'll simply enlarge the staff at the insurance commission, you'll go to further expense and people will stop settling cases at mediation.

The system at the Ontario Insurance Commission works fine. You may not know this, because you're not there. You should come and see what goes on there. Thousands of cases are handled. Mediation settle most of the cases. Arbitration pre-hearings settle the bulk of the other cases. Very few cases that enter the system go on to arbitration. You have developed, in the last five years, a group of arbitrators who know the most about this system, more than the judges in the Ontario Court (General Division), because it's the arbitrators who have been hearing the cases. We don't need neutral evaluation. It will increase the expense and it will not reduce the number of cases that go on to arbitration or trial.

The nature of the appeal before the director cannot simply be confined to an error in law. What if the arbitrator makes a colossal error on a finding of fact? What if there's absolutely no evidence to support the finding of fact? What will be the remedy of the aggrieved person, be it the applicant or the insurer? There will be no remedy. I suggest to you that you allow appeals to the director, in addition to questions of law, in respect of findings of fact on a material issue supported by no evidence. So if a wrong finding is made with no evidence, at least the aggrieved person will have a remedy.

Conflicting decisions at the Ontario Insurance Commission: A terrible problem. We have one arbitrator deciding that you deduct net collateral benefits from income benefits; we have another arbitrator saying no, you deduct gross benefits from ordinary benefits. We have conflicts in decisions between arbitrators. We have conflicts in decisions between arbitrators and judges. There has to be a provision to sort it out. There has to be an immediate appeal. There has to be an immediate application to the director so the director can sort out the conflicts. If you don't do that, you'll have all kinds of cases proceeding for no reason because no one knows what the law is.

Now, are you short of money? Do you not have enough money to fund the benefits that you'd like to fund? Is there not enough money to reduce the deductible that not-at-fault victims must bear? Is there not enough money to pay the innocent person that 15% of his net income that he will lose under your plan? I have a solution for you: Instead of not allowing income replacement benefits for the first week after an accident, don't allow income replacement benefits for two weeks after the accident. That means every single person collecting income replacement benefits, which average in this province \$272 a week, will give up an extra week.

You think that's a strange idea? Look at the unemployment insurance act. There's an elimination period there of two weeks. You want to motivate people to go back to work? Give them no benefits for two weeks following the accident. That will give you enough money to give the innocent person, the not-at-fault victim, that 15% of his net income you're taking away, and that will give you enough money to reduce that deductible.

I'm sorry for talking so quickly. I had a lot of things I wanted to say, and you limited me to 20 minutes.

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The Vice-Chair: Thank you, Mr Malach, for a very thorough and very candid presentation. That expires the time, folks. No questions there.

Mr Malach: I'd be happy to answer your questions outside the door.

NELSON OWLES

The Vice-Chair: Next is Nelson Owles. Good evening, sir, and welcome to the committee.

Mr Nelson Owles: Okay, great. It's good to be here this evening. My name is Nelson Owles. Up until this moment, I've remained one of the silent majority in this province who does not complain about public policies. But I'm very pleased to be able to contribute to the process that we have in our democratic country.

I really believe, from my personal experience over the last month, that the business and government-legislated compulsory system of insurance in this province is totally out of touch with the real wages, increases in rates and competitiveness issues that are going on. I heard today on the news that the legislation would still allow 8% increases over the next five years, according to the opposition, after 20%-plus over the last two years. Are the companies not making a profit at all? Do changes year after year really do nothing? We have to pay whatever is offered or not drive at all; don't take a car, just stay on the TTC, whatever. So rich people drive, and good used cars sit on the lots because the insurance costs are up to five to 10 times the value of a \$500 junker, because all you can get is Facility insurance or something stupid like that.

I'm particularly concerned with the use of the Facility Association by insurers. This is the aspect of our system that I'd like to deal with tonight. Just a basic thing I found on Facility insurance in one of the other publications from a few years ago when it was being reviewed by Brian Charlton:

"Competitive pressures have created a situation in which insurers have tended to select low-risk drivers to keep costs down. Thus, many drivers with clear records have been forced to buy very expensive insurance from the insurer of last resort, Facility Association. Policies written by Facility Association rose from 2% of the industry total in 1987 to 8% in 1990." I don't know what the up-to-date figures are. "The last resort had become the only resort, the sole choice for far too many motorists. Once a driver is insured by Facility Association, it's difficult to get back in the regular market."

Then another part of it was: "Too many drivers cannot obtain insurance at reasonable rates. Insurance in the regular market is currently unavailable"—these are 1990 figures—"to some 250,000 drivers, despite the fact there are over 150 companies writing auto insurance in Ontario. Drivers who were unable to obtain insurance with individual companies at market rates had to rely on expensive Facility Association coverage."

Facility Association—and they explain what it is, for my benefit—8% of policies, up from 2% in 1987, and then they were saying how it is now making a profit. In 1990, it was collecting \$534 million in premiums, more money than any other insurer in Ontario.

What I found was that I was being put in this market, and I really didn't agree that I needed to be in this Facility pool. Let me go back to where I was. In my personal case, I have 18 years of driving experience—personal, business. I was licensed in the province, took driver training, have had a spotless record, clean driver's abstracts my whole life. I presented my record to the insurance companies here in Toronto last month, and I was told by some that because I've not had insurance since 1988, I'd be placed in the Facility group, something I'd known nothing about before then. Others told me that because I was not presently insured, they would not even give me a quote over the phone.

In terms of background information about my case, I was last insured with Allstate in 1988. I sold my car and moved into the city proper and used the TTC, like a lot of people. At the time, I was insuring a 1972 VW Beetle, a 15-year-old vehicle, for approximately \$500 a year, which was almost what I paid for it. Third-party liability of half a million dollars was the coverage I got, with a deductible of \$50 for comprehensive. I was driving 12,000 kilometres a year, pleasure rating, at age 27.

Now here it is 1996, I still live in the same geographic driving area, I still have an old car which I just purchased before I found out that Facility was going to cost me an arm and a leg. It cost me \$500. I thought it would keep the insurance rates down, give me a good deductible, save me on repairs. Now that 1981 Mercury Capri, 15 years old, is costing me \$3,000 a year in the Facility market to insure.

The increase was unbelievable to me; I couldn't believe it. I'm getting \$1-million third-party liability, and that's it. I can obtain nothing else in coverage without paying right through the roof. I'd pay maybe \$75 to \$100 less if I just got the \$500,000.

So that increase was from \$500 to \$3,000 just because I was out of the market. Yet when I present it to all the insurance companies that I would vouch for my record in terms of all the abstracts I've had issued by the Ministry of Transportation, my past employers who would vouch for my clean record while I was in their employment, and even my present employer, none of them would give any better rates or say they could get me out of Facility, because I haven't been insured continuously over the last three to six months.

Over those intervening years, it's gotten worse for me in all ways. I cannot believe the rates I was being quoted and being stuck in the lowest category. In a compulsory system I don't believe that increasing a person's rate about 75% a year, since I last obtained insurance, is a system that is working for an average citizen with a perfect record.

In my case, a 500% increase from 1988 to 1996 is incomprehensible, when inflation has maybe increased 20% maximum over that time, and maybe a little bit of profit on top of that. Maybe 40% would have been a fair increase. I expected to pay a little more, but this is, I really believe, outright greed. A 10%-a-year increase for the last two years and maybe 5% to 8% over the next five years is totally outrageous when people like me have lost wages over the last five years and are lucky to stay stable. Forget about raises.

Five per cent increases when wages are being slashed is not what I call stability. Even \$1,500, half of what I now pay, is outrageous from the \$500 I paid in 1988. That is still a 25%-a-year increase. Half of what I pay now is 25%. Who's making that kind of money to pay those kinds of increases? We don't need stability; I need a rollback of outrageous increases over the past five years to fair and reasonable rates. Then maybe stable, inflationary increases might be justified.

Profits for companies are never enough, it seems. Government does have power to change things, I know that, and hope that through all the vested interests, the government policies, the rhetoric and everything, the never-ending changes to the system will finally get it right. The good drivers, like myself, should expect lower rates, not being a good driver and then getting increases.

The business of insurance should not be allowed to put people in a high-risk market like Facility for no good reason except the profits that they make there. I would really like to think that the people in government can fix these systems and police the business interests so that I do not become cynical about how many of these things operate.

Mr Sampson and members of the committee, I do not envy your task. Time will tell.

Mr Silipo: There isn't really much to ask. The point, I think, has been made quite clearly. I hope that in the discussions that follow there will be some way to address the very issue that you raise, because it really is something that we've heard in a couple of other instances so far. I think if we really are serious about giving drivers a good product in terms of coverage at reasonable rates, we need to also address the very issue that you've put before us of good drivers who just have been out of the market, not needing insurance, and all of a sudden they get categorized in the worst situation possible.

Mrs Marland: I would like to congratulate you on your presentation. It really was superb. I said to Mr Arnott, the member for Wellington, sitting beside me—I think you said you had been driving 18 years?

Mr Owles: Yes.

Mrs Marland: I find that very hard to believe looking at you.

Mr Owles: I know. I get it all the time.

Mrs Marland: You have been one of the best presentations we've heard today because you introduced us to yet another perspective. I'm quite sure that Mr Sampson has heard that perspective because he's been working on this for eight months now, but no one else—

Mr Owles: I tried to keep the rhetoric and the hyperbole to a minimum.

Mrs Marland: I know, and that's what we appreciate. But the other government members haven't been meeting for eight months with all the stakeholders and parties to this subject of automobile insurance, and it's been most refreshing and just been wonderful to hear you articulate, well-expressed presentation today. So we thank you very much for coming.

Mr Owles: It just seems to get so far out of whack; that's all I felt. I saw that the public forum was available—and it's so far removed; you really can't believe how far removed it is. When you finally get down to

brass tacks with the people—and this is their business, but they really don't see that they're just in a compulsory system, taking a whole group of people and saying: "Sorry, we won't even consider you. We're not even going to look at all your record. We just really don't want to insure you. You haven't been in the system, we don't really know what kind of risk you are, and even though you present ideas to say there are ways around it, we don't want to hear that."

1830

Mr Marland: What it's similar to is someone who has always paid cash for absolutely everything for maybe 10 years of their life, and then they go to get a bank loan and because they haven't used plastic money and established a line of credit—it's similar in a way.

Mr Sampson: Thank you very much for coming. I will resist asking Mrs Marland how many years she's been driving so I can guess her age. I'm going to pay for that one, I think, after the committee's over obviously, and maybe for a number of months.

I must admit, of the many things I didn't know when I started this eight months ago, one of them was what the Facility Association was and how it could impact me as an insured driver. One of the messages I've been trying to give the industry is that we need to fix that. I think the concept is right; we need to have a way to insure the higher-risk driver and frankly make sure that the rates of that higher-risk driver appropriately reflect their high risk and that it not be passed on, as it currently is, to people who shouldn't be in that system.

The dilemma, of course, is that there is a grey area between, and I'm going to use these words, the good driver and the bad driver, and the dilemma the industry hasn't been dealing with is, how wide is that grey area and how does one get in it—and how do you graduate out of it, so to speak? Clearly, people do have bad driving habits and there should be a mechanism for them to earn their way back into a good driving category. But the methodology that is currently being used by the industry to deal with that high-risk driving category, the governing rules of the Facility Association, do not appear to be doing what they're supposed to be doing, which is to penalize the bad driver and provide an ability for somebody to graduate out of it. We'll be looking at that as part of the review.

My bigger concern initially was to try to fix the problem. I think what's happening in the Facility is more symptomatic of the fundamental product misdesign. If we can get that right, get the rate increases down to a level that does represent stability, then we should be able to move on to say, "Okay, now how do we deal, in that environment, with someone who continuously wants to display bad driving habits, ie, an indication of their propensity to get involved in an accident?" That's clearly

what that system is trying to do but is not doing a good job at it.

Mr Kwinter: Thank you, Mr Owles, for a very, very good presentation. I think that, next to the medical rehabilitation, the number one issue that really has to be addressed is the Facility. Most people have no idea what it is, they have no idea how it works. But basically what happens is of course, if you make insurance mandatory, then the industry has an obligation and the government has an obligation to provide insurance. You can't say, "You must have insurance to drive, but unfortunately you can't get insurance, so you can't drive."

So what they have done is, they've set up this Facility that is run by the industry to get what they consider to be high-risk drivers. The problem is that it is being abused, it is being utilized in a way that it wasn't intended to be. To give you an example, we've had cases today where we've had insurance brokers telling us that insurers are in some cases cancelling their arrangements with brokers. If you're an unscrupulous broker and you can't place insurance, and a client comes in and says, "I need insurance," rather than say to him, "I'm sorry, I have no market for you. Go somewhere else," they'll say, "Well, you've got to go to the Facility." That means the broker then gets a commission from the Facility for placing a very, very high-premium package.

I think that's something we really have to address. We have to make sure that the Facility does what it's supposed to do, and that is, if you're a high risk and you must have insurance, you're going to have to pay the penalty. Unfortunately, too many people are shoved into the Facility, are paying premiums, and they don't know how insurance works. They take it as a matter of faith that the person they're dealing with seems to know what he's doing. If he says that's what it is, that's what it is.

But you're absolutely right. You're absolutely right that it makes no sense that a male under 25 is penalized just because he's a male under 25, when someone who may be 65 and has never driven before gets a license and doesn't have the same penalty. So it should be experience. At age 25, you could have been driving for 10 years, maybe longer, with an absolutely unblemished driving record. But because of the way the rating system works, it can't be done on an individual basis, so it's done in categories based on actuarial experience.

I think you've really done this committee a service in bringing your concerns to it and hopefully it will be addressed.

The Vice-Chair: Mr Owles, thank you very much for your presentation this evening. Have a good night.

The committee will resume its hearings at 9:20 tomorrow morning. The committee is now adjourned.

The committee adjourned at 1836.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Crozier, Bruce (Essex South / -Sud L) for Mr Phillips

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

Clerk / Greffier: Franco Carrozza

Staff / Personnel:

Andrew McNaught, research officer, Legislative Research Service

Alison Drummond, research officer, Legislative Research Service

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First Session, 36th Parliament

Official Report of Debates (Hansard)

Wednesday 21 February 1996

**Standing committee on
finance and economic affairs**

Auto insurance

Chair: Ted Chudleigh
Clerk: Franco Carrozza

Assemblée législative de l'Ontario

Première session, 36^e législature

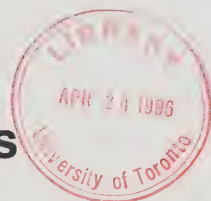
Journal des débats (Hansard)

Mercredi 21 février 1996

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Assurance-automobile

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Wednesday 21 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Mercredi 21 février 1996

The committee met at 0924 in room 151.

AUTO INSURANCE

ZURICH CANADA

The Chair (Mr Ted Chudleigh): We will commence with the first presenter, Zurich Canada. Judy Maddocks and Jim Christie, welcome to the standing committee on finance and economic affairs this morning. Your brief has been distributed. Do you wish to read the brief or make comments to it?

Ms Judy Maddocks: I will read the brief, if that's all right with you.

The Chair: Then we will proceed to questions, if there's any time remaining. We have 20 minutes.

Ms Maddocks: Mr Chairman, committee members, good morning. With me today is Jim Christie, an actuary and partner with Ernst and Young. I want to thank the members of the committee for taking the time to hear our perspectives on auto insurance reform. Since this will be the fourth system in less than a decade, I know you will thoroughly study all the issues at hand to ensure that you do not have to reconvene on this topic again in a few years.

Zurich Canada employs over 1,200 people in Ontario, generating over \$60 million in salaries and benefits for the Ontario economy. With more than 300,000 auto policies in force and over \$400 million in premium, we are the second-largest writer of auto insurance in the province.

When customers get angry about skyrocketing premiums, brokers and insurers are on the front lines. Ultimately, governments are not immune from the anger of consumers. Zurich Canada wishes to be part of a solution that lasts for Ontario. These hearings are our opportunity and obligation to articulate on behalf of Zurich Canada's customers how imperative it is for the next automobile insurance product to provide sustainable, stable rates.

The reality of auto insurance is that we need to satisfy the six million drivers in this province, regardless of whether or not they have a claim. First and foremost, we must build a product that delivers price stability over a long period of time. Zurich Canada applauds the government's intent to rein in the escalating costs resulting from Bill 164. However, the proposed plan before this committee will not meet the government's objective of providing rate stability. In Zurich Canada's view, rate increases of between 35% and 40% over the next five years will not meet our customers' expectations.

The actuarial report on the draft legislation by Ron Miller of Exactor Insurance Services predicts an annual

premium increase of 7% to 8%. However, Zurich Canada believes the report underestimates the impact of broad tort access on rate stability. If any of the study's several assumptions are wrong, or if any of the several caveats in the costing comes to pass, then we will not be anywhere close to the predictions of 7% or 8%. Even that rate of increase does not meet customer expectations. Substantially higher premiums will certainly exceed public tolerance.

We have prepared two charts which have been distributed with our written submission. The first is a costing of the government's proposal by breaking down the major components. The second chart is an illustration of automobile insurance costs. It compares the government plan with some proposals that Zurich Canada will put forth later in this presentation. It also runs through the history of the various products we've had in place in Ontario over the last decade.

Referring now to chart 1, you will see the components that comprise insurance industry costs and affect rate stability. The chart is a useful tool because it highlights the balance between tort access and accident benefits. You will see that before 1989, Ontario was in a high tort environment. In the two years prior to the introduction of no-fault benefits, premiums increased by more than 33%. The major cost component pushing up the rates was bodily injury tort.

From 1990 to 1993, the cost of accident benefits was the significant cost component. Tort access was restricted and rates were relatively stable. Unfortunately, the auto insurance legislation of the day did not contain enough controls on accident benefits and, after a brief period of relief, rates began to rise again. During the two years we have been under Bill 164, accident benefit costs have reached new peaks. If we continue under this regime, premiums will increase by 85% over the next five years. This is simply not acceptable.

Under the proposed plan, accident benefits are cut but tort access is once again broadly reinstated. The government plan does not reduce accident benefits to the level they were at before 1989, yet it expands the access to tort over Bill 164. How can rates be expected to increase at a sustainable, stable price when both of the main cost components and drivers of price are at high levels?

0930

To many of the members of this committee and to other industry representatives, these arguments no doubt seem familiar. We've been going over them for more than 15 years.

To determine the balance between the cost components of tort access and accident benefits, we must weigh the richness of the benefits against what the public will be

willing to pay. We know the public has an intolerance for rates that grow exponentially, so we must all govern ourselves to make sure that premiums do not go past that point of intolerance.

Zurich Canada is not fundamentally opposed to the right to sue. Our position is that a severely injured not-at-fault accident victim should have recourse through the courts. However, the proposed legislation introduces tort access that is far too broad. It will undermine the industry's ability to provide fair and competitively priced products.

I'd like to draw your attention to the experience of other jurisdictions with broad tort access. Tort insurance programs in other jurisdictions have been found by numerous analyses to be relatively inefficient in delivering benefits to accident victims. In virtually every jurisdiction in North America where consumer anger has driven product reform, the catalyst has been the escalating costs of premiums. Ontario must be the only jurisdiction in North America that is moving towards broader tort access.

On January 1, 1995, Saskatchewan Government Insurance found that it could no longer increase rates to compensate for costs related to tort; bodily injury costs shot up over 40% between 1993 and 1994. At the beginning of 1995, Saskatchewan moved its auto insurance system away from tort access towards no-fault benefits.

Previously, on March 1, 1994, the Manitoba provincial insurance company also shifted the balance towards no-fault benefits. It found costs had to be controlled.

In comparison, the province of Alberta, with a broad tort environment, has seen astronomical rate increases. From 1990 to 1994 premiums have soared 62%, with no end in sight.

Even California, one of the most litigious jurisdictions in North America, is shifting the balance away from broad tort access. Proposition 200 has been put forward in reaction to huge rate increases. If passed this spring, the proposal will eliminate litigation from California's auto insurance system.

It has been stated elsewhere that the closer an auto insurance system is to a tort environment, fewer benefits pass through the system to the claimant than in a system with a higher quotient of no-fault benefits. In 1987, before no-fault benefits were introduced in Ontario, insurers spent \$300 million on legal fees while claimants spent \$400 million. Think of it: 41 cents out of every dollar spent in connection with bodily injury claims went to legal fees instead of to claimants, or otherwise to keep rates stable and premiums low. Not only that; the total \$700 million equalled almost a quarter of the direct cost of all auto insurance.

The government's plan also deflects OHIP costs for treating car accident victims back to auto insurance customers. The insurance industry has asked for, and received in the past, exemption from this levy. While OHIP subrogation does not contribute to rate instability over time, it does add 2% to 5% to the premium in year one and ongoing of the new plan. Mr Miller's study does not account for this factor. All cost projections of the product under the proposed plan should factor in this ongoing cost.

As I stated earlier, Zurich Canada wishes to be part of a solution that lasts for Ontario. Zurich Canada believes that the consumers' tolerance for year-over-year increases does not extend too much beyond 5%. In fact, customers whom I talk to, who are not related to the insurance business, say, "That is far too high." They want to see something closer to CPI. The IBC's costing of the government plan allows for an annual increase of 7% to 8%, without the inclusion of OHIP and contingency. If we accept the IBC's figure as a starting point, then we must drive at least three points of premium increase out of the government plan.

Zurich Canada respectfully requests that you consider the following suggestions when amending the government plan. They will assist your effort to bring rate stability back to Ontario's automobile insurance system.

Firstly, introduce the words "permanent" and "physical" to the non-economic verbal threshold and index the non-economic deductible to the consumer price index.

Secondly, apply the same threshold to both economic and non-economic losses.

Thirdly, exclude the use of contingency fees for auto insurance litigation.

Zurich Canada has costed out these proposals and determined their positive impact on premium price stability. If you refer to the charts in the appendices of our written submission to this committee, you will see the effect of these suggestions on the price of premiums and rate stability.

Adding the words "permanent" and "physical" to the verbal threshold addresses the significant contribution that bodily injury tort makes to premium price. Indexing deductibles maintains their significance and relevance as time passes. These stipulations would decrease total bodily injury costs by one half of 1%. Applying the same threshold to both economic and non-economic losses would realize an additional drop in bodily injury costs by 3.25%.

I am referring now to chart 2 in the handout. We believe the net result of our proposals will narrow the gap between the IBC's projected rate increases and what the public is willing to pay by two points.

Contingency fees may soon be coming to Ontario's legal system. Mr Miller's report has not factored in the cost of contingency fees, or the impact they would have on rate stability. The number of claims that end up in court would, could, increase dramatically. Informal studies of other Canadian jurisdictions indicate that contingency fees may add anywhere from 2% to as much as 7% to loss costs. Using Mr Miller's figures, the additional cost accompanying contingency fees would bring the annual rate increases under the proposed plan into the double-digit range seen under Bill 164.

Price stability is a product of cost predictability. Contingency fees are an unknown variable and will contribute to price instability. The draft legislation should stipulate that contingency fees not apply to auto insurance litigation.

There is a need to reduce the annual rate increase by at least one more point. Clearly, there must be another area from which these cost savings can come.

We have not had an opportunity in the short time available to consider cost containment initiatives pertain-

ing to accident benefits in any great detail. However, with medical and rehabilitation costs expected to increase by 15% under the proposed product, some considerable action must be taken.

Some of the preliminary areas of concern for Zurich Canada were covered by the IBC earlier this week—the treatment plan initiative, for example. We would also like to see the strengthening and exploring of the gatekeeper aspect of the system to ensure the maximum amount of resources go to injured claimants, not other parties. The impact of fee schedules on medical and rehabilitation costs should be explored.

There is little doubt among the government, insurers and Ontario's six million drivers that there must be changes to the current auto insurance system. Present and imminent rate increases reflect that reality. However, in our haste to move away from the current system we should not fail to examine very critically the proposals placed in front of us.

Rate instability is usually the catalyst that prompts an auto insurance review. The variable cost components of the auto insurance product are bodily injury tort claims and accident benefits. If the costs associated with either tort access or accident benefits grow too rapidly, the result will be increased prices.

Zurich Canada does not pretend to have all the answers to this complex problem. However, we do believe that the government plan tilts the balance between these cost components too far into a tort environment. We also believe that the three proposals we have put forward today will help the government improve rate stability and reduce the trend of rate increases within the guidelines of its proposed plan.

Zurich Canada wants to assist the government in providing an automobile insurance system that will help the insurance industry meet the needs and demands of the public: reasonable benefits at a reasonable cost, once and for all.

0940

Mr Monte Kwinter (Wilson Heights): Thank you very much for your presentation. In your projections, where you show the potential increase as it's proposed by the IBC, and the savings that you would have with applying the threshold to all tort and prohibiting contingency fees, could you tell me if you take into account the shared costs on health care that would be added back into the premium.

Ms Maddocks: The OHIP transfer? Is that what you're talking about?

Mr Kwinter: Whatever the amount is, yes.

Mr Jim Christie: No, we have not. We anticipated that OHIP costs would be borne by the insurance industry, and if they were not, our costs would be lower in each of the years.

Mr Kwinter: The point I'm making is that in your calculations, if it was borne by the insurance industry, that would reflect in the premiums.

Mr Christie: Yes.

Mr Kwinter: Is that calculated in?

Mr Christie: These graphs do include the insurance industry paying for OHIP.

Ms Frances Lankin (Beaches-Woodbine): Judy, in terms of these numbers, what I'm trying to understand is,

if you add in 2% to 5% for OHIP, if you add in 2% to 7% for the contingency fees, if you assess the transition costs and whether they were adequately reflected in Mr Miller's costings or not, if you add in your own assumptions on the caveats, it's not 40% we're likely to see. Is it 50%, is it 55%, is it 60%? What does it add up to?

Ms Maddocks: I would say the range is considerably more than 40%. Also, to add to the uncertainty around what you're talking about, some of the assumptions and caveats—I don't know if you've had an opportunity to go through—indicate that if those assumptions are flawed in any way, there could be substantially higher trends than are indicated. I would hazard a guess that you're looking at a minimum four points above what the IBC is perhaps predicting. So year one, you're maybe into 11%, 12% at a minimum. It could be much higher than that.

Mr Peter Kormos (Welland-Thorold): Howdy, Ms Maddocks, again.

Ms Maddocks: Nice to see you again, Mr Kormos.

Mr Kormos: Not good to see you. It's been a long time, many years. The industry doesn't appear to be ad idem on this one. They're all over the place. Zurich is a member of the Insurance Bureau of Canada. How is it that at this juncture point, there is such incredible disagreement within the industry as to what's an appropriate response to the phenomenon of premium increases? Who's right and who's wrong? If you're right and they're wrong, is everybody out of step but for Zurich? What's going on here? Is this a conspiracy again?

Ms Maddocks: Another conspiracy. The reality is that Zurich has made its position, which is somewhat counter to the association's position, known to the industry association over the last year. We've tried to work with them to consolidate our thinking into their planning. So it's fair to say no, there is a real division in terms of our view of where this product should go versus theirs.

Mr Kormos: Do you agree with—

The Chair: Thank you very much, Mr Kormos. I'm afraid you've had your one question. We'll move to the government side.

Mr Rob Sampson (Mississauga West): Back in August, we met and you presented me with Zurich's idea, and I want to thank you for doing that, as a number of other people did. That particular presentation was not too dissimilar from the suggestions you're making now to significantly redesign some of the tort components we have in this proposal. But in August, the trend line you had in your plan was 30% over five years. I'm trying to understand how it is we can get hold of that 30% number, because it doesn't matter how you shake it, that's not an acceptable number. The IBC has said, "Ours is 35% over five years." What I saw from you in August was 30% over five years with significant tort control.

Ms Maddocks: True.

Mr Sampson: Where are we missing the boat here on the control of costs?

Ms Maddocks: Obviously, there are two areas. If you wanted to really, really get into the guts of costs, you could do what Quebec's done and go to totally a pure no-fault system. We're not advocating that, because there is an assumption that severely injured people still want to have recourse through the courts. Clearly that's one area where you could tighten it even more on the tort side.

On the accident benefits side, you're quite correct: The underlying trends indicate that even with the modifications this proposal makes to the medical and rehab side, the underlying trend factor, albeit changing from 30% per annum to 15% per annum, still is driving costs up. Our sense is that we really have not been effective in getting into the guts of that. It's been superficial in terms of trying to apply a \$75,000 limit and those kinds of things. But I think there's more work to be done to actually get into the medical and rehab drivers.

Having said that, I think we have to balance very much the need to ensure that victims of accidents, whether they're at fault or not at fault, who are harmed, need to be compensated fairly and not impaired by the process. I think that balance has not been achieved by this plan and we need to strike that balance. I think there are still savings in that context.

The Chair: Thank you very much, Ms Maddocks. We appreciate the input Zurich Canada has had into our deliberations.

ONTARIO TRIAL LAWYERS' ASSOCIATION

The Chair: We now move to the Ontario Trial Lawyers' Association, Mr Nolan, president.

Mr Dermot Nolan: My name is Dermot Nolan. I'm the president of the Ontario Trial Lawyers' Association. My colleague John McLeish who is with me is the past-president of the association. I will make some introductory remarks and then John will follow with some analysis of the bill.

The Ontario Trial Lawyers' Association, OTLA, is an association of lawyers who represent victims of wrongdoing in civil lawsuits. We do not represent insurance companies or institutions. Not unlike yourselves, we are the people who represent the people. We are also, like yourselves, potential innocent accident victims, and we would like to think that you all share with us a common goal which is best expressed in the OTLA motto—"Justice For All."

Unfortunately, it has not been our experience over the past seven years that those who have studied automobile insurance in this place have cared a whole lot about justice for all. Instead, they have gone from bad to worse in response to a phoney so-called insurance crisis. The result has been a tragedy of enormous proportions for the people you and we represent. It is a story of cowardice and avarice; it is a story of deception and oppression.

Our clients are ordinary people. Day after day they come to us looking for justice. And you know what? They know what justice is. They also know what common sense is. When someone has wronged them, they expect justice to prevail to relieve their suffering. They stare at us in disbelief when we tell them how their political leaders have stolen their right to justice because some insurance companies need to make more money. It offends their sense of fairness and it bedevils their common sense. Their pain grows deeper and it turns into hostility and anger.

Ordinary folks understand that from time immemorial, human nature looks to even the score when one person wrongs another, and if a fair and credible system of justice is not in place, the unbridled laws of nature take

over. To avoid this and to civilize humankind, every legal system in human history has required the wrongdoer to fully make up to the person who has been wronged. The rule has always been the same: The innocent victim must be made whole.

Enter the modern insurance lobby. Enter cowardly legislators stamped by fear and deceit. Exit the wisdom of the ages. Exit justice.

This government is the third successive government with an opportunity to demonstrate courage and fairness in dealing with automobile insurance. Its two predecessors have failed that test miserably.

0950

This government came to office trumpeting common sense. Regrettably, in this bill, we see a brand of common sense which includes much of the same old non-sense. It is a glimmer of light in the darkness, but unless this committee does the right thing, this bill can hardly be heralded as much more than a modification of misery, a fragile illusion. The innocent victims can hardly be blamed if they don't jump for joy merely because their death warrant has been commuted, only to be replaced by a life sentence with no chance for parole.

Let me be clear. There is not now nor has there ever been any justification whatever for restricting the historic, timeless and fundamental human right of innocent accident victims to full compensation for all of their losses which result from the wrongdoing of others. The fundamental right of victims of wrongdoing to seek justice from the perpetrator of their harm is not an insurance issue. There is no justification whatever for a \$15,000 or a 15-cent deductible from an innocent victim's claim. There is no justification whatever for imposing a threshold of any kind on innocent victims and there is no justification whatever for restricting an innocent victim's right to full indemnity for 100% of gross economic loss.

These restrictions perpetrate the fundamental injustices of the Liberals' Bill 68 and the NDP's Bill 164. They mix up tort rights with insurance contracts. We urge you not to confuse the two as your predecessors have done.

Even if you feel, as legislators, that you must put limits on insurance coverages, you can do so without restricting in any way the tort right of innocent accident victims against the perpetrators of their harm. Even if you feel there must be a deductible, why not make the wrongdoer pay it? Why further victimize the innocent victim?

Think about it. If Conrad Black goes out and gets drunk one night, gets behind the wheel of his Rolls and runs you down on the sidewalk, why shouldn't you be able to recover all your losses from him? If you feel the law must restrict his insurer's obligation, restrict what his insurer can be made to pay, that's one thing, but there's no reason to limit your right to recover directly from him what his insurer doesn't have to pay. Why should you have to pay, for example, a \$15,000 deductible? Why not make the wrongdoer pay that out of his own pocket or her own pocket? That doesn't affect the insurance picture at all.

We urge you to repair this critical damage to our ruptured system by leaving tort rights where they've resided for 35 centuries—in the careful hands of our

justice system. The basest criminal is granted unrestrained access to justice; the innocent victim deserves no less. Do not perpetrate again the chaos of the last six years by failing to distinguish between regulating insurance contracts and meddling with fundamental human rights. The innocent victim must be entitled to a full cup of justice, not one riddled with holes from a shotgun blast by a reckless Legislature.

Finally and most importantly—and then I'll turn it over to my colleague—we urge you to train your sights on the real culprit: road safety. Please do everything in your power to reduce these horrible accidents. Improve and enforce safety standards, the rules of the road and effective driver training. Encourage the research and development of bold and creative measures that will replace the automobile in the 21st century with transportation systems that are both effective and safe.

We have seen the carnage wrought by the automobile. We have touched the lives it has broken. It's time we all said enough and found another way.

We know that insurance or no insurance, threshold or no threshold, rights or no rights, the only satisfactory answer is no accidents. What is required now is an aggressive pursuit of an integrated strategy to reduce and eventually eliminate these accidents while providing a fair system to care for and compensate for their innocent victims.

I would now turn our time over to my colleague John McLeish who's the past president of OTLA. John has comments on specific items in the proposed bill. Thank you very much for your time.

Mr John McLeish: Good morning, members of the committee. I appreciate the opportunity of being able to address you this morning. I've looked at the legislation in detail. I am appreciative of the fact that the government has committed to clean up what has been described as no less than a shambles.

The Chair: Excuse me, if I might interrupt. We're not picking you up on Hansard. We will get a hand mike for you immediately, if not sooner. I apologize.

Mrs Marland: I'm wondering if we could move the overhead projector being more to the centre and then members down there can see it and you won't be in our view from this corner.

Mr Kormos: Are you advocating a move to the centre, Mrs Marland?

Mrs Marland: Yes, I am, Mr Kormos.

Ms Lankin: It's a great place to be, Margaret.

Mr Nolan: Mr Chairman, I do hope these technical difficulties won't interfere with our time allotment. That would be a terrible catastrophe.

The Chair: I was wrestling with that problem.

Mr McLeish: Thank you. I'm going to talk basically about three things: the concept of future loss of income on a net basis; something called the tort accident benefits interface issue, which is complex; and the matter of the threshold.

Firstly, with respect to the net income concept, in tort, it is an unfair concept; in theory, it is a good idea. It's unfair for a number of reasons. Number one, if a person receives future net income loss on a lump sum basis, any income from that lump sum is taxable and hence, the

person will be undercompensated to the extent of the tax and the interest which would have been earned on the taxable portion.

Secondly, to calculate future net income loss on a net basis is virtually impossible to do for a number of reasons. One, a person's tax rate will never be known. He might have been in a 40% category, he may have been in a 20% category. More likely it will change throughout his life and we never know what the future holds for tax rates.

Mr Sampson: They go down.

Mr McLeish: Can you see that, Mr Sampson?

Thirdly, there's always a deduction, in my experience, for contingencies so if you're starting on a net basis, let alone 85% net, judges usually deduct in the neighbourhood of 20% for contingencies. Then there are non-recoverable expenses, because it's such a complex subject, for accountants' fees, economists' fees and yes, even legal fees.

One might think that the difference—and here's a graph I've prepared, the top line right there represents gross income. That represents tax payable. Here a person is 20 years old; there they're 65 years old; there are their earnings. One might think that the tax payable is a nice smooth curve like that. That is in fact not the case. Tax payable will be a jagged curve like that. Gross income will stay fairly smooth.

There are all sorts of reasons for that; I've listed them down here. There may be child care expenses which will impact on the amount of tax a person pays, that's number one. Number one is the first child born, number two is the second child. Almost half the population gets separated these days; number three is spousal support. Number four represents an RSP contribution. Number five, a person can start receiving investment income from an inheritance or whatever. There's all sorts of factors that do impact on net income and make it a very difficult calculation. If you try and factor out these things, then you've got an artificial figure. You're not dealing with net income at all.

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The government has made an attempt to deal with that through the use of structured settlements which, in theory, is a very good idea, but there are many, many circumstances when a structure is not advisable. The first one is when interest rates are low. We're in a period like that now. The return is very poor. The second one is when a person has outstanding debts which can be paid with a lump sum settlement. You read in the paper, that's most people these days. Thirdly—and this is a very, very important one—when structured settlement payments need to be indexed to keep up with such things as inflation and future productivity gains. I've got a chart that I will show to you which shows the effect on the annual payments when that occurs, and that has to occur; long-term inflation is 5%. When a person has access to good investment advice, a structure is not a very good idea, and when the structure broker takes an upfront commission, which is almost all the time, the person's immediately losing part of his investment.

Here's an actual printout of a 22-year-old person structuring \$100,000 with 0% indexing. Here's the

person's age, 22, and I've just got the first page here. The payments are almost \$7,000 per year on \$100,000 with zero indexing. Perhaps not a bad after-tax return but, as I say, there has to be indexing, there must be indexing. Look what happens to those payments when you just index at 3%. There's 3%, the same \$100,000; 3% is not nearly sufficient indexing when the long-term inflation is itself more than that. Look what happens to the annual payment. It goes to \$4,500 and change and, as I say, 3% is insufficient.

A more realistic rate of indexing is probably 6%. The initial payments in the first year at indexing of 6% is \$2,640. So while in theory a structure is a good idea, in practice it doesn't make much sense.

I will now talk with something called the tort accident benefits issue. Let me tell you what is happening in the courts out there right now. This is an example: An injured person has a pain and suffering claim worth \$50,000, has a future loss of income claim and tort of \$250,000 for total damages of \$300,000. Now, let's assume that person is getting accident benefits which have a present value of say \$200,000. So far, so good. Let's assume accident benefits are being paid at the time of the tort trial.

With the tort accident benefits interface issue, the judge now is obligated to deduct the present value of future accident benefits which might be payable in the future—might be payable—so that's \$200,000 in this case. So the injured person's total damages were \$300,000, the present value of future accident benefits which might be payable is \$200,000, the net recovery is \$100,000. Nothing wrong with that if the person is going to get future accident benefits for the rest of his life. How can anyone know that?

That tort trial ends, that person walks out of the courtroom. What if the accident benefits insurer stops paying accident benefits a week or a year after the tort trial? What then happens? What are the options for the plaintiff? Do nothing. That plaintiff is undercompensated to the extent of \$200,000. Start an action before the OIC? If the plaintiff is successful before the Ontario Insurance Commission, what can that person get? Can he get the present value of future accident benefits for life? Absolutely not. All he can do is get accident benefits up to the date of that hearing. The insurance company pays up to the date of the hearing; he walks out of there with \$20,000 or whatever. Six months later the insurer stops paying accident benefits; he's back again.

Remedies in the court are no better. Just let me tell you what is involved with that tort accident benefits issue as it now exists, and the language is the same in the proposed legislation. Here's how we resolve that issue: We have our trial. We complete our trial on liability and damages and a judge comes out with his decision, or the jury does. Then we start the second trial, or the trial within a trial. Why? Because we have to determine the present value of future accident benefits which might be payable. We will never know the length of time for which they might be payable. There are three expert witnesses each side needs: a doctor to give evidence on the injured person's worklife expectancy; an economist to predict what the nominal rate of interest will be over the person's worklife expectancy; and an actuary to give the

present value of those figures. That kind of hearing can take two or three days, and the cost of it is immense.

Now, I've been critical of the legislation. It would not be right of me if I came here and didn't offer you a solution to the problem. There's a very elegant, simple, inexpensive solution. Let's take the same person again, the same damages: \$50,000 for pain and suffering, \$250,000 for future loss of income. Total damages are \$300,000. The present value of future accident benefits which might be payable in the future is \$200,000. By the way, it makes no difference to the example whether the accident benefits insurer is or is not paying accident benefits at the time of trial. The defence lawyer in the tort action always takes the position that he is entitled to the deduction for accident benefits which might be payable. That's how the legislation reads.

The plaintiff receives a sum of \$300,000 in total damages. Now here's the way to solve the problem: Accident benefits are then assigned by the injured plaintiff to the tort insurer and paid to the tort insurer. The plaintiff keeps his \$300,000. If the accident benefits are terminated one week or one year after the trial, it's the tort insurer that has the direct right of action against the accident benefits insurer. The plaintiff does not need to get involved again.

Here's the important issue: That concept is industry-neutral. If a tort insurer gets treated unfairly by an accident benefits insurer, fine; they can sue. They may lose on that particular day, but the next case the next day, that accident benefits insurer is going to be in the position of the tort insurer and vice versa, and in the long run that concept is industry-neutral. It will wash out and you will not have innocent accident victims being deprived of fair and reasonable damages. That solution is in my paper.

The last thing I will say to you is with respect to the threshold and the deductible. If I have someone come to my office and I'm a plaintiff's lawyer and that person has a significant injury—a fractured tibia, fibula—if that case is worth \$200,000, is that person going to undertake that case for \$5,000? No. Is that person going to undertake that case for \$25,000? No. I would say from my experience that the \$15,000 deductible, combined with the threshold, is effectively acting as a \$30,000 or \$35,000 deductible in those kinds of cases, and in this province and in this country it takes a very significant injury to get to that level.

Other comments, not criticisms but helpful suggestions, are in my paper. I thank you very much for your time.

The Chair: Thank you very much, Mr McLeish. I thank Mr Nolan and the Ontario Trial Lawyers Association for the presentation.

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DOMINION OF CANADA GENERAL INSURANCE CO

The Chair: Our next presenter is the Dominion of Canada General Insurance Co, Mr George Cooke. Welcome to the committee.

Mr George Cooke: Good morning, Mr Chairman, members of the committee. Two days ago I appeared before you on behalf of the Insurance Bureau of Canada.

Let me acknowledge our support for the submissions of IBC. Today, I am here as the president and chief executive officer of the Dominion of Canada General Insurance Company.

The Dominion is 100% Canadian-owned, one of the largest property and casualty insurers in the country, and one of the largest auto insurers in Ontario. We have served the needs of Canadians since 1887, when Sir John A. Macdonald was our first president. Background information about the Dominion is found in appendix 2.

It is helpful to understand what is wrong with the current product before we try to fix it. In my view, one of the major problems associated with the design of Bill 164 is that it attempts to predetermine the outcome or entitlement associated with 100% of all possible circumstances. This leads to a product which is overly complex and, as such, provides substantial overcompensation for many. This arises because notions of indemnity are replaced with notions of entitlement. For example, someone with no income prior to an accident may collect income benefits post-accident because of entitlement provisions. It is this factor alone that clearly demonstrates why a pure no-fault system cannot work appropriately in this province.

We support the government's approach to product design, which we believe can ultimately translate into good news for good drivers. The reintroduction of tort for economic loss allows the existence of a much more moderate no-fault component and the opportunity to tailor-make solutions for the most difficult cases. In so doing, it reintroduces the principle of indemnification. Polling shows that 67% of Ontarians support the return of tort access for economic loss. The provisions for optional coverages are clearly an additional victory for consumers, allowing them to better match their purchase to their need.

Without—and I underline and emphasize the word “without”—product reform similar to that outlined by Mr Sampson, our company, which has maintained adequate rates through annual rate filings, would increase rates on July 1, 1996, on average, by 10%. This increase can now be avoided. Our average premium of approximately \$1,000 will not be increased.

If the changes recommended by IBC, particularly with respect to the control environment for medical/rehabilitation/attendant care costs, are incorporated by the government, we will be able to reduce prices for good drivers by up to an additional 5%. These good drivers can save 15% this year. Good drivers deserve a break, and with increased tort access for economic loss, those who are claims-free and conviction-free can get a break.

You've got to understand that when we're talking about trend in these matters—and I think this is something the committee may have missed—these increases in trend don't start applying on July 1, 1996. The first year increase is avoided, and so there's a substantial saving in the first instance.

In making these observations about what we believe we can do with our prices, we happen to believe that our ability to manage claims fairly and effectively is better than that of many of our competitors and therefore, although industry trends may be 6% to 7% with the IBC proposals incorporated, we think we can do better.

The historical medical/rehabilitation trend is materially in excess of the trend associated with tort bodily injury. Overutilization of medical/rehabilitation programs and the increasing prevalence of unsubstantiated therapy and feel-good treatment are very costly. The expenses arise from excessive entitlement provisions, lack of insurer control, and poor information and management systems.

What this tells me is that if we have a product with a substantially reduced basic medical/rehabilitation component and an increased tort bodily injury component, then the observed differences in the trend will produce a result which is materially more stable. Combined with extensive claims control features, such as an insurer's veto and outcome-based accreditation of health care facilities, the result will be a very sound product with price stability.

Let us look at trend for a few minutes. I'm going to try to simplify what you were concerned about on Monday. To illustrate, accept that trend, substantially, consists of the following: In the copy of my remarks that you have you'll see a chart which lists four components—cars, wages, med/rehab and tort bodily injury. It then indicates the trend and the insurer control.

The cost of cars, safety features and replacement parts are increasing above the rate of inflation, at about 4%. We don't have any control over those costs.

Wages can likely be held to the rate of inflation. We don't have any control over those costs either.

Med/rehab costs have trended at over 25%. On Monday, Mr Miller indicated that he capped that historical trend at 15% in his costing to reflect improved controls in the government's proposal compared to those in Bill 164 and OMPP. We believe that the control here can be further improved.

The tort bodily injury trend is based on historic observation of accident year results, which is the proper way to assess trend. The government has proposed improvements to help control this trend, including the disclosure of information at the time of claims statement etc, which we think are positive, but contingency fees, if introduced, may make this trend somewhat worse. That 7% number is likely a pretty good number.

Clearly, though, you must include that trend has nothing to do with the consumer price index. And looking at these numbers, if trend is to be reduced, medical/rehabilitation costs must be reduced.

Incidentally, in response to a question from Mr Wettlaufer, our operating costs in aggregate have declined in absolute terms over the last four years. At the same time, the costs of administering elaborate medical, rehabilitation and attendant care programs have increased substantially.

Somewhere in the range of 40% to 50% of the payout associated with a whiplash soft-tissue type of injury goes not to the victim but to case management, as we try to manage these elaborate and very poorly controlled programs.

Comment has been made that costs of transition to a new system will be substantial and will increase prices. This is not true. Transition costs may be substantial—we don't know—but they are absorbed by companies and are not recovered in rates. If I incur substantial costs this summer during a transition, my prices are already set.

Those costs flow to my shareholder. They do not flow to the consumer. Auto insurance prices are set prospectively, and so this transition cost argument, albeit an important factor for all of the industry, is not one that the consumer need to be worried about.

I'm sure that by now you are aware that I have concerns about the cost of medical/rehabilitation treatment. Obviously, injured people require treatment, good quality treatment. Insurers need to be able to ensure that their insureds receive good quality treatment, not less than they need but also not more than they need. But—a very important “but”—unnecessary medical treatment is currently being provided. It is costly and it is harmful to insureds. Our current insurance system, in its broadest sense, permits conflict of interest involving health care providers, the legal community and others.

Part of the solution to these two concerns lies in the product design I have already noted. Another part lies in the proper outcome-based accreditation of medical facilities. I understand that yesterday a number of physiotherapists offered views somewhat similar to mine in this area. It's very rewarding.

For your consideration, I have included a copy of a presentation on these concerns which I made recently. It's in appendix 3. I would like to highlight the part of that presentation addressing conflict of interest.

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The insurance industry is concerned about those who have a financial interest in the clinics to which they refer their patients. For example, a recent study found that the frequency of treatment is about 40% higher and costs 30% to 40% more for patients at a clinic owned by the referring physician. Patients were also 50% more likely to be referred for therapy if the referring physician has a financial interest in the therapy clinic. It is interesting that disclosure of the conflict of interest did not lessen the high rate of referrals, treatment duration or cost. Those studies were included in appendix 4.

I have not yet mentioned those circumstances we face daily when some lawyers have a financial interest in the clinics to which their clients are referred, or the convenient financial arrangements between some lawyers and some medical practitioners to increase their respective workloads through referral.

All involved in the task of returning the insured to pre-motor vehicle accident activities as soon as possible must share this common goal. Without strong controls, including outcome-based accreditation for facilities, and the right to direct care, there is no guarantee that this goal will be achieved.

Changes are also necessary to the way in which our industry is regulated.

(1) A new product should allow for substantial change to the mediation and arbitration practices of the Ontario Insurance Commission. Today the process is too costly, too slow, too imbalanced and too uncertain.

(2) Rate regulation should move to a file-and-use as opposed to a pre-approval approach. This change will encourage a more competitive marketplace and, in addition, it will reduce cost.

(2) Insurers must be allowed to collect underwriting information relating to collateral benefits, income and

occupation. Without this information, those writing individual risks will continue to face unfair competition from those writing group plans. Group plans are essentially surrogates for this information and if individual writers are not allowed to compete fairly, the group regulations should be scrapped in the public interest.

(4) If the 5% provincial sales tax were eliminated as a separate tax, and instead blended with the 3% premium tax, there would be no revenue loss for the government but the administrative costs for brokers, companies and government would be reduced. The result is an easier interaction with the consumer and less cost and waste in the system.

These are only four suggestions. There are a number of others that were detailed by IBC which we endorse.

In conclusion, we have an opportunity to resolve the many auto insurance issues correctly this time. I compliment Mr Sampson for allowing us to discuss his draft proposals before introducing legislation. I urge the government to carefully consider all the views expressed to this committee and look forward to a stable environment in which to operate. As a Canadian company, this is the only environment we have.

The Chair: We have time for a round of two-minute questions. We start with the third party.

Ms Lankin: Two minutes is just not enough.

The Chair: I realize that. It also includes the answer.

Ms Lankin: Definitely not enough.

The Chair: I apologize for that.

Ms Lankin: The numbers that have been put forward by the industry and some of the conflicting positions put forward are difficult for this committee, there's no doubt. In the insurance industry's estimations, even under Mr Miller's actuarial assumptions, rates are going to continue to increase under this new plan. You've downplayed that very much from your company's point of view, but we had Zurich here and we will have Co-operators and others—State Farm are here—who in fact disagree with the position you've put forward.

But I have some problems between what we're hearing from you now and what we heard from you a couple of years ago. I've gone back and taken a look at your presentation before the standing committee on Bill 164. There, contrary to your position now that's it a good idea tort's being reintroduced, you were deathly set against it. Your quotes were quite dramatic.

At that point in time, you also said that the OMPP product was underrated or underpriced by about 12% to 13%, and those increases would come in in 1994-95 irrespective of Bill 164. I guess the point I come to is that it's very difficult for this committee to know from the insurance industry what they really expect to happen. You also made a very serious point about road safety initiatives back in 1993, like graduated licensing. I haven't seen any rates go down as a result of that. I haven't seen you refer to it. Could you perhaps give us a sense of where this is really going to go, and why your numbers or your projections are so different than Zurich's or Co-operators', for example?

Mr Cooke: I'll try to respond, Ms Lankin, and thank you for noting that I appeared before this committee some three years ago almost to this day. At that time, I

did express concerns about tort and, in particular, what I was concerned about at that time with Bill 164 as the wide-open season for general damages. Subsequent to those hearings, the government of the day restricted the tort access for general damages, arriving at the verbal dollar-threshold combination that has been slightly modified by Mr Sampson. Those were where my tort observations were focused. Frankly, if you also look at those remarks, I openly advocated tort for economic loss at that time; I always have.

In terms of OMPP, as many of you know, I was part of the group of civil servants who were otherwise involved in its design and construct. One of the problems with OMPP is that it was put into place quickly without the opportunity to put adequate controls in place for the med rehab accident benefit components. There was a two-year review, because people were very much aware of the fact that those controls weren't in place, and at the two-year point in time the government of the day was more interested in nationalizing the industry than fixing the product.

In terms of road safety, I was a champion of graduated licensing and I still am. I think it has had a very positive effect. It is not yet mature enough that we can clearly isolate those factors, but we are tracking them. Frankly, as a company, we will continue to offer price reduction wherever we can for good drivers and to support those kinds of safety programs.

In terms of the differences between our position and Zurich's or for that matter Co-operators', I have no idea where Co-operators are. You obviously seem to have some advance knowledge. I think they're going to present behind me so I've not heard the remarks.

In terms of the Zurich position, I just very strongly disagree. For whatever reasons, Zurich seems to think that the nasty actor in all of this is tort. There's absolutely no historical substance to support that assertion and, frankly, the charts this morning were not particularly compelling. I think if they were probed, you would likely find that the kind of trend I'm talking about in terms of tort would appear, as it has in Mr Miller's material.

What can I say? In a comparative marketplace, reasonable people differ. That's one of the attractive aspects of a competitive marketplace. We believe in the product construct Mr Sampson has outlined with amendments, that we can maintain stable prices and can in fact right of the bat offer price reduction. Our prices are adequate. Perhaps the companies that have concerns with this don't share that positioning.

Mr Wayne Wettlaufer (Kitchener): George, thanks for coming today and appearing before the committee. You probably heard that Rob Sampson said yesterday that if the price increases are 7% to 8%, obviously changes have to be made to the proposed plan. One of the concerns I have, knowing a little bit about the industry, is the inefficient—no, I shouldn't say inefficient, inefficiencies that exist in some of the insurance companies' claims departments. If these can be addressed in the very near future through increased training, could we reduce the trends that you show?

Mr Cooke: I can only speak for my own company. I'm very proud of the people in our claims area. We have engaged in extensive training over the last few years. We

also have introduced absolute state-of-the-art claims management technology. There's nothing in the industry that compares with it.

With these kinds of changes and improvements, we believe there's certainly a part we can play in terms of helping to control and manage these costs. The problem for us is that we need the opportunity to do that. If we had, for example, outcome-based accreditation facilities, I think the consumer and the politician could be much more at ease with allowing us to direct care to those facilities, because everybody would know that those facilities were good facilities.

When I say "outcome-based," I want to differentiate it from process-based. I don't want to just know that there are good, qualified people there; I want to know that these people can actually demonstrate clear, beneficial results in terms of shorter durations of treatment, reductions in cost, improved outcomes in terms of returning people to their pre-accident status. If we are allowed to have those kinds of controls so that we can direct and manage care instead of having to spend 40% to 50% of our payout dollars fiddling around with elaborate bureaucratic nonsense to placate those who may mistrust us, then yes, we can make substantial gains and those trend lines will come down.

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Mr Bruce Crozier (Essex South): Over the past year and half or so when I've met with you on numerous occasions I've valued your opinion. As has been mentioned, we all realize around this committee table that the increases that have been suggested so far have to be addressed and that we have to find areas where we can reduce that somewhat, yet your presentation this morning doesn't address any specific areas where you think we can get away from the 7%, 8%, 9% increase that the IBC has proposed and that I suspect you were part of preparing, so you must agree with to some extent. Are there no areas where you feel we can start to address the problem with the legislation as it's drafted?

Mr Cooke: Let me be very clear: The IBC has not proposed the product that otherwise gave rise to the 7% or 8%. What we have said is that the draft version of the construct before this committee would give rise to trends in that order of magnitude. IBC included two very detailed appendices of some 20 pages or so in length, outlining very specific, detailed suggestions as to how these controls could be put in place that would reduce the trend associated with those areas.

I've gone further than that, perhaps at a high level, but advocating things like outcome-based accreditation of facilities and urging people in the broader sense—I fully appreciate that the mandate of this committee is too narrow to deal fully with all the conflict-of-interest concerns that I've given rise to. But my analysis that I've put to you tries to help us focus, I think, by looking at the components of that trend, to help us focus on what it is we need to look at. Very clearly, if you've got the kinds of components the way I've set them out, and I've tried to make them simple, it tells you where to look.

When you go look in the medical rehab area, you find some very wonderful, dedicated, skilled people truly trying to help people. You also find substantial amounts

of abuse and a great deal of inefficiency that's imposed on companies having to deal with the elaborate mechanisms that flow out of this entitlement notion as opposed to one of indemnity with tort. I would argue that by very clearly setting out product design, there are features that can help mitigate that trend substantially.

The Chair: Thank you very much, Mr Cooke. We appreciate your presentation and that of the Dominion of Canada General Insurance Co before the committee.

ONTARIO BRAIN INJURY ASSOCIATION

The Chair: We now welcome the Ontario Brain Injury Association. Mr Guinan, welcome to the committee.

Mr Richard Guinan: Thank you.

The Chair: Is it Miss Baptista?

Ms Barbara Baptista: Barbara. Ms.

Dr Robert Gates: Good morning. I'm Robert Gates.

The Chair: Welcome. Please proceed.

Mr Guinan: The Ontario Brain Injury Association is pleased to have the opportunity to present its views to the standing committee on finance and economic affairs. This important and timely legislative initiative will affect the lives and health care of thousands of Ontarians who depend on their automobile insurance coverage to protect them in the event of injury in automobile crashes.

Before I get into the formal presentation, I'd just like to share with you some statistical information that is not part of this brief, but will at least give you some idea as to the magnitude of the problem we face as an association every day.

In the province of Ontario, some 12,000 to 15,000 people per year suffer brain injury, 64% of which is caused as a result of car crashes. Out of those, approximately 2,000 to 3,000 will be left with permanent impairment.

The Ontario Brain Injury Association exists to educate the public about brain injury, to provide information about the prevention of brain injury and to ensure that persons with brain injury have access to reasonable and appropriate services to reduce disability and handicapping conditions and to promote community integration.

We compliment Rob Sampson on his initiative and we support the reintroduction of the tort for innocent accident victims. We support the streamlining of the process of accessing medical rehabilitation benefits. We support the establishment of the committee to oversee the selection and operation of the designated assessment centres. We support the retention of the \$1-million limit for medical rehab benefits for serious brain injury and the separate \$1 million for attendant care. We also support the streamlining and strengthening of the dispute resolution process and the assessment of insurers for health care costs.

However, in reviewing the draft legislation, OBIA has identified several aspects of the proposals which require clarification and amendment, and hopefully this morning we'll be able to provide you with that kind of clarification. First of all is the definition of "catastrophic impairment," and Dr Robert Gates will speak to that in a moment. The limited ability of children and students and unemployed to sue for future economic loss is a concern

of ours; the unrealistic monthly limits for attendant care expenses, specifically on brain injury issues; no specification of mandate and powers of the designated assessment centre committee; lack of an explicit right of insured persons to treatment and the right to select their own health care provider; unrealistic time limits for notification of insurer; and unrestricted insurer examinations.

The first area we'd like to deal with is with respect to the definition of catastrophic injury, and I'll ask Dr Robert Gates to speak to that.

Dr Gates: Good morning, ladies and gentlemen. I'm here as a consultant to the Ontario Brain Injury Association to help advise it on the technical issues involved in trying to achieve a reasonable definition of "catastrophic impairment." I'm aware that you've probably already heard from other groups that there are some problems perceived within the professional community with this definition as it applies specifically to brain injury.

What I'm going to tell you today is that the current proposal, which is to use the Glasgow coma scale, should just be dropped. It's just not appropriate to use this particular indicator to assess impairment following a brain injury, and I'll just try to very quickly run through some of those reasons. I think you've probably already heard a few of them.

The Glasgow coma score was developed by neurosurgeons in the early 1970s to assist in the acute or emergency medical management of coma. It was never developed or intended to be used as a measure of impairment in the long term following brain injury. There is literature to show that the Glasgow coma score does have a correlation with outcome when you look at large groups of patients, particularly when you look at people with severe brain injury. But the literature does not support in particular the validity of what are called single-point differences in the scale.

For example, the current draft legislation reads—or I think it's the regulations, actually—that a catastrophic impairment is a score of nine or less on the GCS. Well, there's no literature to support that the needs of people who obtain a score of 10 are in any way any different from those who obtain a nine. I think that for the committee and for the government to rely upon the GCS to validly and fairly make that discrimination is just wrong.

There are other technical problems with the GCS. It's not always measured. It sometimes is measured after the person has regained consciousness. Automobile accidents don't always occur in the middle of cities where ambulance attendants can arrive within minutes. Sometimes they occur in the middle of the night in remote areas. The GCS sometimes cannot be obtained because of other medical conditions that are present, such as intubation or medically induced paralysis. We've summarized in the brief a variety of technical reasons for dropping it.

But we realize that this sort of criticism puts the committee in an awkward position, because some objective means of defining "catastrophic impairment" needs to be presented, and we're here today to tell you that we have a concrete alternative for you. It's a scale with a very similar name, and that's because it was developed by the same group, in Glasgow, Scotland, in the 1970s, and it's called the Glasgow outcome scale.

This particular scale was developed specifically to measure outcome after brain injury. It's very widely used in large group studies of the outcome of patients after brain injury, and it's the most frequently cited measure in the research and clinical literature on outcome after brain injury.

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Mrs Marland: Excuse me, Mr Chair. I'm sorry. I'm having a little difficulty hearing you, and it's not your fault. The door has been opened and closed a number of times. We can't increase the volume without having feedback, so if you could speak up a little, please.

Dr Gates: I'll do my best.

The Vice-Chair (Mr Tim Hudak): You could probably raise the mike a bit. It bends. There you go.

Dr Gates: Is this any better? Okay. I know I'm going quickly, too, because there's a lot to say and we realize we've got a short period of time. So I'll try to sum up and let the other presenters carry on.

We've included a written brief which you can look at later which gives our expanded reasons for using the Glasgow outcome scale. But, very briefly, this scale, in our view, is ideally suited to measuring impairment and disability after brain injury.

Our point is that, after all, for purposes of treatment, what we really need to measure is the person's needs, their actual impairments and disability at the time they present themselves for treatment, which may be within weeks or months following an injury or may be as long as years later. The professional community needs a measure that is going to be applicable in those situations. I'll leave it at that and perhaps there may be a question or two once we're finished.

Mr Guinan: In the brief, we've also noted the limited access to tort for students and unemployed individuals. We feel that because brain injury is such a catastrophic and complex disability, this section of the act needs to be rethought, as we believe it's unfair. A child who suffers a brain injury may not have an opportunity to ever be employed, and in fact our statistical information will reflect that the majority of people after a brain injury are unemployable. I think it's an area of the act that has to be looked into.

I'd like to pass it on to Barbara Baptista, who's the chair of the Ontario Brain Injury Association, for her comments on some further issues of concern.

Ms Baptista: The complexity of brain injury gives rise to so many critical issues that relate to this legislation, understanding that the majority of brain injury is a result of automobile collisions. Just this morning I heard somebody on TV say we are in an era—the information age, we call it—where it's the brain's activity and not the body's activity that becomes the demand on a person. So you can understand how concerned we are about any legislation that relates to brain damage.

One of the critical areas, and I've heard this from the speaker just before us, is the whole area of choice—consumers' choice, I'm talking about—for the interventions and the rehabilitation service that they receive. Unfortunately, the actions of many insurers are that they arbitrarily cut off rehabilitation, delay treatments or utilize stop-type procedures.

I have appended, or we have appended here, the Ontario Brain Injury Association, and I'm going to make reference to it, some letters and reports, some received by the insurance industry, where treatment has unilaterally been denied, no rationale, and I'd like you to look at one from a health care practitioner here, a report. I'm going to quote just portions of this, but I would really advise you to read all of the appendix.

He's talking about, "I called Ms Jones," an insurance adjuster, because she has stated that she was disappointed by the rehabilitation report. He states:

"It turns out that the report was disappointing because it recommended rehabilitation. It was Ms Jones's opinion—and these are fictitious names, by the way—that Mr Smith did not warrant rehabilitation because (1) he was a no-good drunk before his accident and (2) he was too disabled to benefit from rehabilitation."

These are actual cases. This is the real letter, with fictitious names, that went out.

Another part of this:

"The insurer has stated openly that the desired goal for Mr Smith is placement in a nursing home, with costs borne by the government."

This is a very critical statement here for anybody in the rehabilitation profession:

"As such, the insurer places this facility and the professionals that provide services at Quality in an ethical dilemma. Do we simply put the man out on the street?"

You can see all the dilemmas there. This is an individual with cortical blindness. This is severe brain injury: Glasgow coma scale 4, low-level neurological function at the time of the accident.

"Ms Jones," the insurance adjuster, "has never met Mr Smith, nor had she based her opinion on the assessments of other doctors. I must conclude that her decision was based exclusively on financial considerations for the insurer."

There's another fax that just came in to us yesterday, written by the insurer, and the names of the insurance companies have been blocked out, because there's not a particular insurance company. This is a pervasive problem that has to be addressed for persons with brain injury. It is critical. The costs to other systems, whether it's CPP, whether it's workers' compensation, whether it is our welfare system, and certainly to the Ontario hospitalization insurance plan, are extensive.

The insurer has written here, in their own handwriting, "I will authorize each individual step as we see fit here at" the insurance company.

How can you measure outcome of a rehabilitation plan, whether it's facility-based or non-facility-based, because rehabilitation exists within the community—and the Ontario Brain Injury Association is concerned about the community. It exists within homes, it exists within work-sites. How can you measure it if a plan is not being followed?

If a mechanic has to fix a car and somebody says, "Well, you can only do that part," and the car needs other parts fixed, that car's not going to operate, and how can you measure outcome? And then you blame the mechanic.

That's inappropriate, that is not acceptable, and the Ontario Brain Injury Association has provided its wording

to part XII, which addresses this issue, and our recommendation that you include in, I believe it's 61(1), that they "shall obtain such treatment and participate in such rehabilitation of their own or their own health care practitioner's choice...."

The costs in this process come from delay, and there are reams of literature on delay in the rehabilitation process and the cost to the system. It comes from misinformation and misguidance on rehabilitation plans.

I can tell you that people with brain injury want rehabilitation, they want treatment, they want to get better. But they certainly want to have input, and they need to have their issues, their needs, their concerns, their disability and handicapping conditions considered and there has to be sensitivity in that issue. That's essential if we are going to control any costs in that area.

I'll turn it back to you, Rick, on some of the other areas, because you will see that there are related concerns that we have around this whole issue of control of the costs and the involvement of the consumer in the process.

Mr Guinan: That brings us to the comment about the designated assessment centre committee. OBIA is pleased that they will appoint a committee to oversee the selection and operation of DACs. However, the draft legislation is silent on the responsibilities and powers of the committee. We recommend that these be spelled out in the legislation and the regulations so that there can be no doubt that the committee will act in the public interest.

Specifically, the DAC committee should be charged with the responsibility to report to the commissioner, the minister and the public on at least an annualized basis on the quality of work done by the DACs and the effectiveness and efficiency of the DAC system. OBIA feels that this is especially important in light of the increased importance DACs will likely have in determining the adequacy of treatment plans developed by claimants and health care practitioners.

We recommend for specific brain injury issues the Ontario Brain Injury Association should be part of that DAC committee. We have the expertise to understand the issues surrounding brain injury. We have no conflict of interest. We're a neutral organization that represents the best interests of the consumer, and we strongly recommend that we be considered in that particular area.

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The brief itself outlines some more details with respect to some of the concerns we have, and it's all constructive criticism. I think it's important that you recognize that our interests are to protect the rights of people with brain injury. Our interests are also to make sure that insurers treat people in a fair and just manner. I spent 26 years in the insurance industry and I've always questioned whether insurers—they're concerned about fraud from the public sector side; what about insurance fraud from their side? If you're paying a premium, you should get coverage. The fighting that goes on is absolutely unacceptable, specifically in this particular area.

So you folks will make the right decisions, I hope, and I hope you've listened and understand our position. We appreciate the opportunity to present this morning and we look forward to hearing some of the results of your deliberations.

The Chair: We appreciate your presentation. I'm afraid our time has expired. I'm sure if the committee has any questions, they'll be contacting you directly. Thank you for your time this morning.

CO-OPERATORS GENERAL INSURANCE CO

The Chair: We now have the Co-operators General Insurance Co; to present, Mr Terry Squire. Welcome.

Mr Terry Squire: Good morning. My name is Terry Squire. I am president and CEO of the Co-operators. Joining me today are Karen Lock, our claims vice-president, and Andrew Cartmell, our personal lines underwriting vice-president. I would like to begin by saying that we appreciate the opportunity to appear before this committee today.

The Co-operators is wholly owned by 32 co-operatives and farm organizations from across Canada. We provide insurance and related services to Canadians and have been doing so for more than 50 years. Although we operate in all provinces and territories, well over half of our activities involve the provision of insurance services to Ontarians. To that end, the Co-operators insures approximately 500,000 automobiles and 750,000 customers through a network of 180 offices, and we employ about 1,500 people in the province.

Clearly, we have a significant stake in the health of automobile insurance in Ontario. On behalf of our stakeholders—our clients, staff and member owners—we come here today to represent that stake. We wish to provide both an endorsement of many aspects of the draft legislation and regulations and to provide what we consider are valuable enhancements to other aspects of the proposal. Our objective is to achieve our shared desire for an available, stable and less expensive automobile insurance product.

We believe that Bill 164 should be repealed. While the Co-operators has worked hard to make Bill 164 a successful product for both our clients and our company, we believe that it is simply too expensive for consumers. The uncapped indexation feature makes the product particularly unstable over time.

We support the draft legislation in the following areas:

(1) We believe the accident benefit levels are reasonable and provide a humane level of care for any injured claimant, regardless of fault.

(2) We support the identification of catastrophic injuries so that benefit dollars may be targeted to those who really need them.

(3) We support the opportunity to purchase additional benefits. This minimizes the cross-subsidization of premiums and allows drivers who need the extra protection to purchase the cover. This provides further opportunity for our agents and brokers to offer sound advice and meet the real needs of our clients.

(4) We support the early active treatment provided by the minimum expense regulation for physiotherapy and chiropractic treatments. This ensures consistent, early treatment, which is critical to a person's recovery.

(5) We agree that the designated assessment centres should be maintained, as our experience to date has been very positive.

(6) We agree that the automobile insurance rate review process needs to be streamlined and support the changes outlined in the draft legislation.

That said, the Co-operators does have serious concerns with the draft legislation dealing with increased access to tort. Further access to tort will increase rates over time.

We assume the true intent of the legislation is to permit tort actions for those not-at-fault claimants who are seriously injured for an extended period of time. In our opinion, the legislation opens up tort to a greater degree than intended. Tort results in uncertainty for clients who know neither how much compensation they will receive nor when. Tort adds costs to the system. Tort has its place, but Ontario drivers cannot afford the cost unless the use of tort is restricted to claims in which a fatal injury, serious disfigurement or serious, permanent physical injury has been sustained. We urge the government to make this change, which is of course a change to the threshold.

If I can digress for a minute, what all those words really mean is, and I don't put a value judgement on this, but are we going to reward people who have soft-tissue injuries—which is a nice way of saying “unproved,” often whiplash injuries, and you have a headache for a period of time or a psychosomatic thing resulting from an accident, which is unproven. Are we going to reward all kinds of people for \$10,000, \$20,000, as much as \$50,000? Some of you may remember in British Columbia they found that 50% of their entire premium was going in this, I'll say, soft area. It's a huge issue. As I say, I don't put a value judgement. If society wants those rewards going to people, you have to pay for them, and the price of automobile insurance will go up. So it's a value judgement in terms of price.

Back to the text. This more restricted threshold must apply to both economic and non-economic loss. I would like to emphasize there is not a tort-based jurisdiction in Canada in which we sell automobile insurance that has bodily injury tort trends of less than 15% a year. The greater the access to tort, the higher the annual bodily injury trends and the greater the risk of unacceptable rate increases. Contingency fees will simply exacerbate the situation. Again, we recommend a tighter threshold for both economic and non-economic loss.

As I stated earlier, we believe the accident benefit levels are reasonable. However, we would like to recommend the following changes:

(a) Optional indexing needs an annual cap, as included in many pension plans. Without an annual cap, this option is very difficult to price and, consequently, expensive to purchase. If you can't figure it out, you're going to take the worst possible case. That's just human nature.

(b) The definition of “catastrophic injury” needs to be clarified through the appropriate use of the Glasgow coma scale score after a reasonable period of time and by removing the ambiguity with regard to coverage for any other similar impairment or combination thereof.

By chance, we happened to sit and listen to the previous folks. I think the important thing for us is we need a scale that has general acceptance that we can relate to. By chance, up to now Glasgow has been generally accepted. If we don't have Glasgow, I think we need something.

(c) Case management fees should only be payable to qualified personnel. These services should not be used to support a tort claim.

In summary, rate stability is possible only through significant limitations on tort and timely, competent and expert provision of no-fault benefits. The Co-operators has proven that effective, proactive, no-fault claims management can contain costs in a no-fault environment. Claims management, combined with an effective mediation-arbitration process and impartial designated assessment centres, will work to provide long-term rate stability.

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Over the last five years, our accident benefits trend was plus 4.8% per year; that's much less than the industry in Ontario. Today, with the skill level and expertise we have developed, we believe we could improve on this trend and reduce it to close to the CPI inflation rate. This compares to tort bodily injury trends of 15% to 23% across the country. A tight tort threshold for both economic and non-economic losses, combined with reasonable accident benefit coverage, will deliver rate stability.

Finally, it must be remembered that no-fault was introduced in Ontario to correct many deficiencies in the tort system. Many accidents happen so fast that a split-second wrong decision can mean the difference between fault and no-fault. The innocent victim is not always easily determinable. Our objective is to return injured claimants to their pre-accident condition as quickly as possible and to compensate them fairly. That and rate stability are only possible with significant limitations on the right to sue, combined with fair no-fault benefits.

At this point, I would like to thank the committee for the opportunity to appear and welcome any questions you may have. We'll be looking forward to working with the government to ensure that Ontarians have an affordable, stable automobile insurance product for many years to come.

Mr Crozier: We're trying to sort out now, or are beginning to try to sort out some of the differences in the information that's presented to us. A previous presenter in the industry, Dominion insurance, in the med rehab area and the tort bodily injury saw trends of 15% and 7%, yet you're saying that in fact over the last five years your trend was only 4.8%. Can you help us understand the difference in those figures?

Mr Squire: I'll give you a general answer and then I'll ask my colleague, who deals with all the specifics. I think the previous presenter is talking about industry average trends. I've told you about our company trend, and I don't think I'm puffing up our own company when I say we're generally acknowledged in the industry to have done one of the best jobs in really trying to understand the previous legislation, the exiting legislation, and doing the best possible job in handling the claims. So we would expect, given our investments in claims servicing, that we would have a better trend. But I'd ask Karen to maybe give you a couple of specifics if she can.

Ms Karen Lock: We have focused on investing in our claims management and our claims representatives. We've increased our staff; we've reduced our file loads so they can spend time with our injured policyholders so

they can assess the situation and find out what the real problems are. We have a written treatment plan that all parties are agreed to: that we spend time bringing the doctor in, bringing the employer, the treatment providers, the insured and their family into the situation so there are no surprises for anybody, that we're all working towards the same end. We truly believe in returning injured persons back, as best as possible, to their style of life before the accident.

Mr Crozier: What have your increases been, then, in insurance premium rates in the last couple of years, percentage-wise?

Mr Andrew Cartmell: I can answer that. During the period of 1990-93, our rate increases totalled 4.6%.

Mr Crozier: That was under OMPP.

Mr Cartmell: Under OMPP. Then, with the change in the product in the increased accident benefit levels, we increased our rates 9.5% in 1994 and 10.8% in 1995.

Mr Crozier: Each of those is over 4.5%.

Mr Cartmell: Yes, they are.

Mr Crozier: So you had savings in other areas, then.

Mr Cartmell: We gave you our accident benefit trends as being 4.8% per year. What you're seeing there is the change in systems. Our accident benefit trend under the current legislation is actually only going up about 4.5% a year. The problem is that we had to go from a previous system with relatively low accident benefit levels to a new system with higher levels, and we are only permitted a certain increase by the Ontario Insurance Commission. So we simply have caught up to the new benefit level.

Mr Kormos: Following up on that, I recall the plan proposed to the Coulter Osborne inquiry. OMPP was in fact a more conservative version of the smart no-fault; OMPP imposed a more rigid threshold than the smart no-fault, which had its genesis in the insurance industry, and OMPP had a somewhat higher cap on the income replacements, again in contrast to the smart no-fault proposal the insurance industry proposed to Coulter Osborne during the course of that inquiry.

The problem is that under Bill 164, the wage replacement benefits were in fact reduced. It changed from 80% of gross, which was the formula—mind you, with the \$600 cap under Bill 68—to 90% of net. That's a reduction in benefits for the vast majority. Granted, the cap went up to \$1,000, but the reality is that the \$600 cap encompassed the vast majority of injured persons, be they innocent or at-fault victims.

My problem with this whole exercise is that the industry has never come clean on the savings generated by Bill 164, that is to say, the reduction in no-fault benefits, the reduction from 80% of gross to 90% of net; the fact that litigation, the access to tort for even catastrophically injured—and that's the court reference to the threshold contained in Bill 68—was eliminated, replaced by mere no-faults; and the introduction of tort for pain and suffering was chimerical, illusory, because it had a deductible and the vast majority of claims for pain and suffering fell under that deductible, and the fact is that there are, as you know, precedented judicial caps on pain and suffering.

How come the industry has never come clean on the fact that there were reductions in no-faults, reductions in

gross payouts because of the failure to permit people to litigate for economic loss under Bill 164? How come premiums have gone up, as the industry would have us believe, when in fact there were significant reductions in the payouts from 164 in contrast to 68?

Ms Lock: You are saying that you believe there were reductions in Bill 164?

Mr Kormos: Well, 90% of net is less than 80% of gross, no two ways about it.

Ms Lock: I'll come clean with our numbers, Mr Kormos. Our numbers are that our average weekly income benefit has risen 2.5%. Those are clean numbers; that's what we're paying under the current legislation, 164. And we've had reserve money for the loss of earning capacity benefit; that is going to be an expensive benefit to administer. We can pay it, but we can't continue with the current rates if we're going to be paying an indexed pension for life.

Mr Kormos: Go one further. How come the—

The Chair: Is it a short one further?

Mr Kormos: Yes, very short. That took 15 of my seconds, Chair. Gosh.

How come the industry isn't ad idem about the impact of this legislation? The IBC says it's going to generate controlled premium increases of 7%, near 8%. Zurich, the second-biggest seller of auto insurance in the province, comes in here talking about—what were they talking about?—catastrophic increases: 20%, 30%, 40% by the end of the day.

What's going on here? Is there some real whipsawing going on? Is there some real dishonesty about what in fact this scheme means? Is there an effort on the part of the industry to further reduce benefits payable by generating imagery of huge increases when the IBC says modest increases? Which side are you on?

Ms Lock: We're on the side that does not support a return to tort. We look at our position in Alberta. Our accidents are down by about 20% and our bodily injury claims have doubled, and if you look at the cost per year it's only going up. We've done all kinds of things to try and control our bodily injury costs in Alberta, and we still are rising by 15% a year compared to the industry 23%. We can deliver the return to tort, we can deliver anything the consumer wants, but we can't do it with the current rates.

Mr Ted Arnott (Wellington): Thank you very much for your advice. It's very helpful to the committee, and your constructive approach will help us in our deliberations.

One quick question. One of the presentations we had, one of your competitors, Dominion, indicated that under this proposal, they think they'll be able to give some good drivers a break in their premiums. Would you feel comfortable making that same statement today, or is it too early to tell what would happen under this proposal if it's implemented as is?

Mr Cartmell: Generally speaking, when a product change happens, as we've had twice in the last few years, normally the way the companies process the product change is to make a base percentage change across all categories of drivers. How a company would get at protecting certain pockets, the so-called good drivers,

from the other drivers I think could only happen if the industry had an opportunity to recognize things like income levels, collateral sources, that kind of thing. Under the current rate structure and rate classification system we have in Ontario, I don't see how a company could protect certain pockets of drivers. When the product changes, given the rate classification structure we have, companies will apply the base change across everyone; everyone would see a 2% increase or a 5% reduction or whatever. Over time, if it turns out, because of age or sex or how much you drive or where you live, that changes would result from that, it may show up, but I don't know how a company could promise that at this point in time.

The Chair: Thank you very much. We appreciate Co-operators General Insurance, Mr Squire and your associates, for presenting to us today.

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CANADIAN BACK INSTITUTE

The Chair: We now welcome the Canadian Back Institute, Tony Meller. How do you do, sir?

Mr Tony Melles: It's Tony Melles, and actually, after the last question period, I thought it best to bring Paulette McGill up with me to answer any questions that might be forthcoming.

The Canadian Back Institute appreciates the opportunity to respond to the proposed draft legislation. We're going to be commenting on the recommended changes affecting medical and rehabilitation coverage. Our reason for doing that is that the Canadian Back Institute has been in business for 22 years in Canada, we operate 42 centres across Canada, and we believe we have some valuable input into the rehab arena.

In our initial meeting with Rob Sampson, we stressed the importance of introducing controls to the rehab industry, controls to ensure appropriate patient care, define service delivery cost, and eliminate the opportunity for abuse. Regulation is required because of the explosive growth in the number of rehab clinics following OMPP and Bill 164. Lack of regulation in the rehab industry has led to unnecessary treatment, prolonging illness and increasing costs. The recommendations in the draft proposal fall short of providing the controls in the medical and the rehab area. I think this is an important area where we can actually cut costs and save on auto insurance premiums.

We applaud the introduction of the mandatory written rehab plan. We think it's a good idea. It's going to force the rehab providers, the health care providers, to be accountable. It will also give the insurer an earlier opportunity to reject the claim by referring to a DAC for a med rehab assessment. However, this may create an adversarial relationship between the patient and the insurer, and we don't think that adversarial relationship is good for the policyholder. If the goal is appropriate rehab with minimal potential for abuse, we think the government should insist that all insured health care is provided in accredited facilities.

Some regulation could come through the accreditation process. It's interesting that if you have a motor vehicle accident in this province, a collision repair facility is

required to meet more standards than our rehab facilities. They deal with fenders; we're dealing with human lives. It just does not make sense. The citizens of Ontario deserve the peace of mind that comes from knowing that the treating facility conforms to certain standards.

We recommend that all rehabilitation providers be accredited. This is not expensive for the policyholders or for the insurance companies. It's a cost of doing business for the rehab providers to pay for the accreditation. There are many agencies that perform accreditation. They should be external, non-profit, with a history of providing this service and with no link between the accrediting body and the payors or the rehabilitation providers. If we look south of the border, it's one of the few elements of the American system that has provided some stability for the rehab industry. It sets benchmarks that increase every single year.

A comment on the designated assessment centres: They obviously have a more prominent role to play in the new draft regulations, and we agree that these centres will be essential for dispute resolution. We're concerned, though, that because of the earlier opportunity to send people to a DAC, they're going to become overburdened. They're already overburdened; some of the waiting lists for the DACs are three to three and a half, four months. A situation might arise where a patient requiring treatment cannot get that treatment in the acute phase because he's been sent for an assessment. That's unacceptable.

The designated assessment centres should be combined so that both a medical rehab assessment and a disability assessment can be performed at the same location at the same time.

Additional things that need to happen:

We need to have more centres. The current waiting lists are too long.

There has to be standardization to produce consistent services. For those of you who recall how the designated assessment centres were set up, there was no real necessity to prove that you could provide any standard of service in order to do a disability assessment. I would suggest that you could take the same client in Thunder Bay and send him to a designated assessment centre, have him assessed the next day in Toronto, and you would get two different opinions. There's no continuity, there's no consistency, there's no common language, no common terms of reference, no common equipment used, no common questionnaires to evaluate either functional or psychological impairment. It's unacceptable.

Also, the fees need to be set up with a fee schedule. They should be reasonable.

I think the way we can get this consistency that we're all looking for is regulation through an accreditation body. This government has stated that it wants the premiums to decrease. Our sense is that the only way you can get these to decrease is to control the medical and rehab costs. We don't see how that's going to happen, given the proposed draft regulations. We think it is imperative that accreditation become the standard for rehabilitation providers and for designated assessment centres. Thank you.

Mr Kormos: I noted that you were sitting in the committee room during the course of the last presentation

by people on behalf of the Co-operators General Insurance Co. I'm hoping you heard the reference there to soft tissue injury and what appeared to me to be a dismissal of soft tissue injury as something trivial and but a passing annoyance. The impression that was attempting to be created was that it had the impact of, oh, let's say a sliver or a bruised thumbnail. Obviously, none of those folks ever had sciatica or the pain and disability associated with soft tissue injury. Would you respond to that a little? My experience and the experience of the folks I've had to work with is that this can be—albeit far more temporary, hopefully, but that's not always the case. Talk about soft tissue injury and indeed how serious that can be for the person suffering from it.

Mr Melles: Soft tissue injury is very painful, obviously. The literature shows that most soft tissue injuries will heal, with treatment or without treatment, 90% of the time within a very short period, four to six weeks. That doesn't mean there's a miraculous cure; it means that the symptoms stop. They could continue to have intermittent symptoms after that, but that doesn't necessarily mean they're removed from the activities of everyday living. I've had sciatica myself. I understand it's painful, but in spite of the pain, I could go on and carry on most of the activities of daily living after a short period of having to change my lifestyle.

Mr Kormos: But it can at the same time interrupt your employment and cause you to lose income.

Mr Melles: Yes. As a provider, it's more troubling a year down the road to see these soft tissue injuries that are totally disabled, when they don't fit into a pattern you recognize in the early stage.

Mr Kormos: Quite right, and I understand as well that the type of trauma that can precede what appears to be soft tissue injury can down the road generate things like premature arthritic conditions, situations like that. Is that a fair understanding?

Mr Melles: No. Actually, the medical literature wouldn't show that. The arthritic changes occur on their own, whether you're in a motor vehicle accident, whether you play hockey or whether you're gardening. It doesn't accelerate the arthritic changes.

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Mr Sampson: Thank you very much for your presentation. It's good to see you back again. I want to speak to the item about accreditation. I think you also spoke about setting fees and about treatment protocol, that the treatment plans follow treatment protocols.

I want to assure you that there's a reference to something called a DAC committee, a designated assessment committee. Our intention is to see that all those items fall within that DAC committee so for the first time in some time in this province the insurers, the practitioners and the people receiving the treatment can come to grips with, what's the appropriate treatment level and what should be the cost for that treatment level? Therefore, there's a roadmap for the industry and the insured and everybody involved to follow in making sure that the overall objective of everyone in this program, which is to get the insured back to the best state of repair possible, is achieved. Do you see some validity in this DAC committee? Do you see that it will have the impact we think it will?

Mr Melles: I think the DAC committee is a good idea. I still think, though, that it doesn't go far enough. I think you should have an external body that has no vested interest to do an accreditation.

Mr Sampson: You can have an accreditation system established, but if there's no ownership by the people involved in using that system, the accreditation system somehow falls apart. What I'm trying to drive at is that we want to make sure that there's some ownership in the solution by the people involved in the process.

Mr Melles: If you can get all the parties involved on that committee, I think it's a tremendous idea.

Mr Sampson: The intention would be that it would include as many of the stakeholders or interests as possible. Obviously, you can't have a room full of 50 people. By the way, that, I hope, will force some consolidation within the rehab industry of the various groups we're seeing in the rehab community. Again, get some ownership of the process here, something we have not had in auto insurance at all.

Mrs Marland: I was very eager when I noticed that Dr Hall was on our agenda this morning, so I'm disappointed that he's not here.

Mr Melles: We brought Paulette instead.

Mrs Marland: Dr Hall and his brother grew up in my riding and—just a personal thing—his brother went into dentistry, working with my husband. Dr Hall has become very renowned and very highly thought of because of the work he has done in what became such a finite specialty for him. I realize that when you're here speaking on behalf of the Canadian Back Institute, it's a very huge experiential base from which you speak. I didn't know you had 42 centres. Are those inside Canada and in North America generally?

Mr Melles: All inside Canada.

Mrs Marland: Then you're probably in a very good position to answer the question about the different periods that injured parties are off work and consequently on benefits as a result of auto accidents. Apparently, there is a difference in this period between Ontario and Quebec. I wonder if you have any information you could give us on that.

Mr Melles: Quebec has come out with the Quebec task force study, which I think most of the rehabilitation medical field is quite familiar with. They state that all injuries should be treated early; the earlier you get at them, the better they do. However, our experience in Quebec—we have three centres in Quebec—has been that they don't follow the Quebec task force guidelines. There tend to be very lengthy waits to get into rehab programs, and that results in increased costs to the system.

Mrs Marland: So it's worse in Quebec than in Ontario.

Mr Melles: Worse in Quebec, in our experience; also worse in BC than in Ontario.

Our experience is that most of the people involved in motor vehicle accidents get better in a short time and don't seek out treatment. About 10% of the people do, and those are the people of concern, and we have to channel those people into the right types of treatment approach. If they get into the wrong sort of treatment facility, it goes on for months and months, perhaps years.

That drives up costs. They shouldn't continue to be allowed to spin in a cycle of needless rehab.

Mrs Marland: And that's where you come back to the accredited facility not being the wrong type of facility.

Mr Melles: Yes.

Ms Annamarie Castrilli (Downsview): I'd like to continue with the issue of costs for just a moment. We've had insurance companies tell us that the biggest component of cost is the medical rehabilitation component, and we've had victims say to us that they have to endure endless testing, primarily because they're not believed, and they have to go through this process. We've had others tell us that costs could be curtailed with early intervention. I wonder if you might offer an opinion with respect to those three elements of the cost issue.

Ms Paulette McGill: First, in terms of the accident victims exposed to the testing and assessments on an ongoing basis, it's insurers trying to determine what is appropriate for those individuals and struggling to understand why the cycling of treatment continues, which prolongs their disability, keeps them on benefits. That has been going on for some time now.

In that regard, if we go back to accreditation, if there are preventive measures in place prior to sending someone to a DAC or when the insurer receives a bill for expenses, that's where you stop it, not when you're presented with the bill and then you ask the insured person to attend at an assessment. It creates an adversarial situation from the onset, and that's very difficult.

Treatment providers for insurance companies—and my background for some years was with the insurance industry. What I found was that insurance companies would pay a lot of these expenses and very often felt they weren't reasonable, but they did not have one regulating body to go to to say, "We need help with this." Facilities run in a multidisciplinary approach. There isn't one body that can help them, whether that be the College of Physiotherapists or Chiropractors, so they used assessments as a way to determine whether it was appropriate and fair. Very often, it just became a very costly venture. Insurance companies are paying out a great deal of money on expenses in terms of assessment and procedures to determine what an individual needs. That is what has caused the costs to rise so significantly.

In hindsight, had there been some form of accreditation from the beginning, when no-fault was introduced, when OMPP was introduced, we would have seen a very different picture today. You wouldn't see medical and rehab costs at the levels they are.

Ms Castrilli: It comes back to accreditation for you. That's how you reduce costs.

Ms McGill: At the Canadian Back Institute, that's what we believe would be the important key.

The Chair: Thank you very much. We appreciate your presentation. As a former patient, I particularly appreciate your presentation.

CANADIAN AUTOMOBILE ASSOCIATION ONTARIO

The Chair: The Canadian Automobile Association is the next presenter, Catherine Newell. We welcome you.

Ms Catherine Newell: Thank you very much. I'm here in my position as vice-chair of CAA Ontario, government and public affairs committee. I actually am based at the Hamilton auto club, or our new name, CAA South Central Ontario. That's my home club. Pauline is a colleague of mine, both from the Hamilton auto club and she also sits on the committee for CAA Ontario.

CAA Ontario is a federation of 10 not-for-profit automobile clubs representing the motoring and travelling interests of more than 1.6 million members and their families. Advocacy has been part of our mandate since 1903, when our first clubs were established—they happened to be the Hamilton auto club and then the Toronto club—and we appear here today in that capacity, representing the interests of motorists.

I just want to make a quick remark on the process itself. As this legislation will directly affect approximately seven million drivers and their families, we feel that the process of consultation has actually been too short and too compressed, particularly from the standpoint of public input from consumers.

We must comment about the recent history of automobile insurance in the province. In the past six years, motorists have adjusted to three, soon to be four, different insurance systems. Through this period, motorists as consumers have faced double-digit premium increases and general uncertainty about how long the system of the day would last before it was replaced. Given that automobile insurance is mandatory and most motorists consider their car a necessity, consumers have had little choice but to go along with the changes. What motorists want is an insurance system that balances the interests of rate stability in insurance premiums and fair compensation for injured accident victims.

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Concerning the draft legislation before us, CAA Ontario believes that overall, the amendments are improvements to the present legislation. At the public hearings for Bill 164, we argued in support of consumers retaining the right to sue for economic loss, and we are pleased to see that the draft legislation before us does address this issue. We remain extremely concerned, however, about the high cost of premiums.

We understand that this legislation is intended to stabilize the price of premiums, yet we have heard the predictions from the Insurance Bureau of Canada that this legislation will result in premium increases of between 7% and 8% for each of the next five years. Clearly, this is unacceptable. During the election campaign, the Premier promised a new system that would lower rates. This legislation falls very short of the Premier's promises.

Lower premiums should still be the goal. Rate stability would be acceptable, but higher premiums are intolerable. If this legislation can be amended to achieve stabilization of insurance rates, fewer motorists are likely to drive underinsured or, worse, without insurance. If this legislation does not stabilize insurance rates and we continue to see significant increases, more motorists will simply take their chances and attempt to drive without insurance.

In the pre-budget consultations delivered last week, CAA Ontario called for the removal of the 5% tax on mandatory automobile insurance policies. Since sky-

rocketing insurance premiums are due in large part to recent legislative changes to the Insurance Act, the government should be prepared to alleviate the burden on motorists by removing this tax.

As mentioned earlier, overall, CAA Ontario finds the draft legislation to be an improvement over the present legislation. However, it may not be enough of an improvement with respect to stabilizing insurance premiums. In general terms, we are happy to see that the right to sue has been expanded, and for the most part the new accident benefit regulations seem to be appropriate. In principle, we agree with optional top-up coverage for higher-income motorists who wish to supplement their basic coverage. We agree that they should be the ones paying for those higher benefits, and not, as it has been over the last few years, subsidized by the entire group of motorists.

We worry, though, about the level of consumer confusion surrounding the shopping list of optional coverages. We recommend that an education program be initiated immediately upon passage of the legislation to fully inform the public about the levels of coverage now available and the costs associated with the new options. My understanding from a recent conversation with the Insurance Bureau of Canada is that the different combinations of possible coverages mean approximately 250 different plans. That, for consumers, will be terribly confusing. There's a part all of us can play, and certainly the insurers can play a part in this process, as well as the insurance brokers, who will be key. We have a genuine concern that many motorists will find themselves underinsured, overinsured or inappropriately insured for their circumstances.

The introduction of neutral evaluation should have the desired result of providing more options for settling disputes before going to arbitration or the courts.

We are worried—and this is probably one of our most key points—that the threshold for tort for non-economic loss and the deductibles for non-economic loss will be clarified or prescribed by regulation. Regulatory changes are not subject to the same process as legislative changes, and we feel that to be able to change such a significant component of the act must not be by regulation alone. While we understand the desire for flexibility, it is critical that the compensation thresholds not be changed except by legislation. An example of that is, if it were passed that it could be just changed by regulation, a \$15,000 deductible could be a \$50,000 deductible 10 weeks from now, and that would fundamentally change the type of insurance compensation scheme consumers and motorists believe they are receiving. If the intent with this is simply to be able to allow it to move with something like the consumer price index, to tie the \$15,000 threshold to inflationary dollars five years from now, that would be fine, but state it in the legislation, if that's the intent. Anything other than that we would not support, and we definitely do not support that it be by regulation.

We have serious reservations about the paragraph that is described as "a consequential amendment which permits the Lieutenant Governor in Council to prescribe the health care costs that may be recovered from automobile insurers and the procedures to be used in deter-

mining the assessment." While general taxpayers who fund OHIP should be compensated for the health costs associated with automobile collisions, it would be counterproductive to overburden insurers for health cost recovery, the reason being that this cost will only be passed on to the insured through higher premiums; the insurers will not be paying this. In essence, the insureds who reside in Ontario and pay taxes will pay twice for the health services, first, as a taxpayer and, second, as an insured motorist, through higher premiums. According to published reports, the dire prediction of 40% insurance rate increases over five years, as presented by the Insurance Bureau of Canada, had not even factored in insurers reimbursing OHIP for costs related to accidents. If it were factored in as a pass-through to consumers in the form of higher premiums, we are afraid it would only exacerbate the potential instability of rates.

We are strongly opposed to subsections which require an insured person to report an accident to his or her automobile insurer within seven days of the accident. This type of provision has been in municipal statutes. Where, let's say, you went over a pothole and felt the municipality or the city, regional government was at fault because they hadn't kept the roads in proper repair, you had to give a seven-day or, depending upon the level of government, 10-day notice. Those two provisions were struck down by the Court of Appeal as being entirely unfair in terms of timing. The seven days just wasn't considered sufficient. We would feel that perhaps a 30-day time period would be sufficient.

We do support subsection 258.4(2), which states that where an insurer has admitted liability on a claim for income loss, the insurer should make payments to the plaintiff for ongoing income loss incurred pending determination of the amount owing. I think that's very important because that's something in the old tort system we did not have.

CAA Ontario approves of section 26 concerning findings of unfair or deceptive business practices. One of the factors affecting the high cost of premiums is insurance fraud. Insurance fraud is a crime that victimizes all of us who pay premiums. We are therefore pleased to see section 32, which adds three new offences under the act to deter fraud in insurance claims. We ask, however, that the government review the penalties for insurance fraud to determine whether there is adequate deterrence in the system of enforcement.

We have already voiced our concerns about the high cost of premiums and the temptation for some to risk driving without insurance because of these costs. In section 33, which deals with the Compulsory Automobile Insurance Act, we cautiously approve of the increase in fines for driving without insurance. We agree that the fines should be increased. The one thing we don't want to see happen is a fine increase such that courts are more reluctant to convict. That tends to be a propensity of the courts: The higher the penalty is, the more they will be tolerant and not actually register a conviction.

We have a problem with subsection 33(6), which increases the maximum fine for failing to carry an insurance card. Most of us can speak from experience about inadvertent failure to carry an insurance card, either

because we've changed wallets or purses or left a wallet behind in a store or on a dressing table. We believe this subsection is too harsh for insured drivers who may have inadvertently travelled without carrying an insurance card, and that's simply the pink slip. The person who is not insured will come under the far more serious penalty of driving without insurance.

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We recognize that the cost of collisions in Ontario is calculated at approximately \$9 billion. Insurance only helps after the fact. We ask that the government recognize the many contributing factors to road safety and to contribute in a significant way to the reduction of collisions through improved roads, enhanced police enforcement, safer trucking and efforts to reduce impaired driving.

Thank you for this opportunity to appear before you.

Mr Joseph Spina (Brampton North): Thank you for the elements of your presentation. It agreed with the proposals that are there. I wanted to ask you a question, not as an automobile protection association—and that's not the right word, I know. I'm a long-time member, so please don't take that as a criticism of the group. But I want to ask you the question really as an insurance broker, which is I think what you are to a certain extent, because you do sell insurance policies through the CAA to your members, do you not?

Ms Newell: CAA Toronto, which is now CAA Central Ontario, has an insurance company, CAA Insurance Co.

Mr Spina: Okay. Then can I still continue to ask the question?

Ms Newell: Sure.

Mr Spina: I'm trying to understand. With regard to subsection 7(5) in here, you indicated, "While...taxpayers who fund OHIP should be compensated for the health costs associated with automobile collisions it would be counterproductive to overburden insurers for health cost recovery." I'm wondering if you were actually preferring that higher-risk drivers who incur damage and injury should not take the responsibility to cover the costs of health care but actually put that burden of those costs on to the health care system, which is what's happening now.

Ms Newell: Speaking here today on behalf of motorists, I would prefer, if that cost were shifted from the taxpayer to the auto industry, that it remain at the auto insurance level and not be passed through to the motorist consumer.

Mr Spina: Yes, I would prefer that as well. I just wanted a clarification because I sort of read into this that you wanted OHIP to cover it.

Ms Newell: No. In terms of the idea of subrogation, up to 1990 when OMPP came into effect, OHIP was subrogated to all tort actions. So we have the precedent well in place, with health care costs being passed through.

Our concern is the stability of premiums. This is a real problem. Just saying simply, "Well, we'll pass through a percentage of the health care costs," won't stop at the insurer paying those costs. It will be passed through to the consumer, to all of us.

Mr Kwinter: Thank you very much for your presentation. I think it's helpful that we actually have a group that represents motorists making a presentation to us.

The only reason that we're here for this next week is because of rates. I can tell you, and I think I'm speaking fairly, that if rates had been stable under OMPP—maybe they would have changed only because of the next government's real interest in taking a look at government insurance—this committee would not be addressing this issue. It isn't because people have come to us and said, "You know, the rehabilitation isn't working." That may be the case, but I don't think that would have been enough to trigger the committee sitting. We're sitting because of rates. I think that is the major issue. Everything else is really being used to try to affect those rates and get them down.

The reason I'm just giving that little preamble is that I think it's obvious that if you encourage greater tort, it's almost automatic and a given that that's going to drive rates up. You can't not drive it up, because you're also faced with the potential of a contingency regime in the legal profession and the fact that more and more people are going to get access to the courts, which, just be definition, is going to create more expenses, which are going to be passed through to the premium payer. Do you have any thoughts on that?

Ms Newell: Economic loss: We have always been against that loss of right to sue. I think it becomes more important these days than ever before, because the biggest area of employment is going to come from self-employed people setting up their own businesses, and an income replacement benefit in itself may not save the business. If you're severely injured, sure you get your income replacement benefit, but you may not have people who can actually run the business and the whole business fails. There are really valid reasons for retaining or bringing back the right to sue for economic loss in these conditions.

I agree with you, and given the number of members and non-members who would call us from the beginning of the OMPP system to now, we wouldn't be here other than for rate stability, because members by and large have been pleased with the system. They were very upset with the tort system as it existed prior to OMPP; the threshold was far too restrictive. That was a real problem, and then when the NDP brought in Bill 164 and made more generous accident benefits.

Mr Kwinter: One very brief comment: I have no objection to opening up the tort. All I want to point out is that there's a cost to it. There's a cost to all of these enhancements, and when you consider that the major reason that we're meeting is rate stability—and, as a matter of fact, the government promised rate reduction—these are counterproductive in that one affects the other. That was the only point I wanted to make.

Ms Lankin: Just following on that, I guess the more I hear the more I wonder what is the right answer. In going back and looking at some of the submissions before the standing committee that was dealing with Bill 164 in 1993, we heard from the industry at that point in time that the Insurance Bureau's actuarial report that it had commissioned by Wyatt suggested that the rates were

going to have to go up on the OMPP product by between 13% and 26%. So we had a couple of years of rate stabilization, when the industry was somewhat pleased with the changes that were made, but as the system adjusted and as people started to make claims under that system, the actuarial reports were saying that rates would have to go up. We have seen increases and projected increases under Bill 164, and we hear claims of fraud. I do remember similar claims under the tort system, but it was under another system.

I'm just wondering if you have stepped back and taken a look at what kind of product is it that the motorist truly wants, and is that affordable under a stable premium scenario. If it isn't, where does the problem lie? Is it in our expectations in terms of the product or is it in the fact that we have some 160-odd insurance companies, all with multiple administrations, duplication of administrations?

Ms Newell: I think what you've had is actually a big pendulum swing with Bill 164. On the one hand, it was too restrictive to consumers under the OMPP group. Then, when Bill 164 came in, the problem was in control and, my understanding is, a lot in terms of fraudulent claims.

This system will change again in the sense that motorists, when you reduce the benefit from \$1,000 to \$400 and then cause the motorist to have to pay for any increases they want over and above that, along with the funeral benefit etc, they're going to end up paying more for their insurance policy. This is something we've had to really think through. Should it be subsidized by the whole pool, the higher-income earner, therefore have one benefit and leave it at that, or should it really be paid for by the group that will be able to benefit from it if they ever have that need? We agree that group should have to pay for that benefit and therefore will be making probably quite a hefty adjustment in their premium payout, especially the higher-income earner. But that income earner can also pay for it.

Certainly, in terms of looking at a system, fair compensation balanced with stability is critical, and I think even though costs may go up slightly with the ability to sue for economic loss, it should be balanced by the additional costs people are going to have to pay for the higher benefit levels they choose. There should be a balance between the two.

The Chair: Thank you. We appreciate the presentation of the Canadian Automobile Association today.

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CONSUMERS' ASSOCIATION OF CANADA (ONTARIO)

The Chair: If we could move now to the Consumers' Association of Canada, the Ontario section; Ms Helen Anderson. Welcome.

Ms Anderson: I'm going to cut into your lunch hour, I'm afraid. I'll try to be brief. Thank you for allowing me this opportunity.

The Consumers' Association of Canada is a voluntary, not-for-profit, non-governmental association that has been fighting for and winning basic rights and protections for

all Canadian consumers since 1947, almost as long as Co-operators has been around.

Since the 1970s, the CAC has represented Ontario motorists in matters relating to automobile insurance. We have made representations before committees of the Legislature, at conferences of the superintendents of insurance, and to every study, task force or inquiry into the subject over this period of over 25 years. All of our briefs stress the importance, if not the absolute necessity, of a no-fault automobile insurance system.

The CAC is disappointed that the current proposal for a new automobile insurance system is discarding the no-fault plan now, in effect, for a combination of tort and no-fault. We feel this is a backward step which will not benefit consumers. The main beneficiaries will be the lawyers. Certainly consumers will lose and premiums probably will not go down.

A return to tort means going back to making an artificial distinction between drivers who are deemed to be not at fault and drivers who are deemed guilty of causing the accident. I don't know whether you've all seen the fault chart, but the fault chart often says that there is 50% at fault, and 75% or 25%. It's very hard sometimes to know who is at fault. In fact, sometimes the not-at-fault driver really is the one who caused the accident. In any case, no one purposely causes an accident. Accidents happen. If they didn't happen, we wouldn't need the insurance companies. Most accidents are the result of inexperience, poor weather conditions, a moment's inattention, slippery roads etc. In its proposal to Mr Sampson in October 1995, Zurich Canada stated: "Most consumers will not have a car accident. In fact, less than 2% of Ontarians will be injured in car accidents every year."

In a tort system, drivers and insurance companies alike hire lawyers to represent their interests in a court case. Litigation is costly, and the acrimony, antagonism and stress involved take a personal toll on everyone involved. An article in the *Globe and Mail* on February 21, 1991, stated, "Before the introduction of no-fault car insurance in Ontario"—this was in 1989—"more than 30% of claims payments went for legal and court costs—\$500 million in 1989." A no-fault system is designed to look after all parties in an accident without attributing fault. It also frees up considerable funds for rehabilitation and income replacement, not to mention reducing premiums.

Lowering the maximum income replacement benefit to \$400 weekly may mean that drivers who have not purchased additional coverage will feel compelled to sue for extra income, if they are not at fault. At-fault drivers will have to settle for the no-fault level of payments unless they have topped up their income entitlements at the cost of an extra premium. Under Bill 164, all benefits were provided for the basic insurance premium. Under the new proposal, consumers must pay additional premiums to obtain the same or, in some cases—for example, rehabilitation—fewer benefits than they now receive under the current system.

In fact, we think that very few drives will choose these higher levels of benefits. Additional benefits are a discretionary purchase that requires discretionary income. The average driver will not pay the extra premium up

front and may be horrified to discover, upon making a claim, that his benefits could have been enriched. Will brokers find themselves being sued by clients who claim they were not informed of all the options? But of course they'll have errors and omissions insurance to cover themselves for it.

This government has very recently complained that the courts are overloaded. Charges against criminals are being dropped for lack of funding for judges and administration. What will the addition of automobile insurance cases mean to the backlog in the courts? What will be the further effect of lawyers gaining the right to charge contingency fees, if this occurs? We are all familiar with the US stereotype of the "ambulance chaser" who loves to litigate. Can Ontarians afford more litigation?

On February 9 Mr Sampson stated that the insurance industry's confidence in the improved system would enhance competition in the marketplace. He is implying that insurers will reduce their rates. However, in order for there to be real competition in the marketplace, consumers must know what all the companies charge. This is impossible under the current system. Even brokers have access to only a handful of insurance companies—there are three to six per broker on average—because of the constraints placed upon their operations. Pity the consumer who tries to find out more than a few prices.

Printed information on rates offered by all companies is not available to consumers. We recommend that the insurers be strongly encouraged to publish their premium schedules on the Internet and that those schedules include the cost of all the extras. Until that day, we urge the Ontario Insurance Commission to continue to publish its guide to auto insurance rates on a regular basis, perhaps expanding the number of companies, cities and risks listed. The guide should be advertised to the public. Very few people know it exists. This guide gives consumers information they need as it demonstrates the advantage of shopping around and points out the vast spread in premium prices between companies.

This new plan of the government contains many good points which I am pleased to point out:

- Runaway claims for medical and rehab costs will be curtailed and more people encouraged to get back to work, assuming work is available.

- The catastrophically injured persons—incidentally, less than 1% of all injured claimants—will be satisfactorily looked after. All other injured persons—99 point something per cent—will be entitled to medical and rehab services capped at \$75,000, a fair level for most, but perhaps not all, claimants.

- Non-earners, that is, caregivers, students, seniors and housewives, are all given consideration. That's a good thing.

- Attendant care benefits are at a reasonable level.

- Death and funeral benefits are realistic.

- Self-employed persons will be required to state their income in advance in order to establish their entitlement to income replacement.

- A temporary return to employment is still permitted without affecting entitlement to benefits.

- Further dispute resolution measures are introduced.

Those are all very good points, Mr Sampson.

Unfortunately, no benefits are indexed for inflation. This will do a grave disservice to long-term disabled persons who will find their benefits gradually eroded as they get older, when their need to purchase care is higher. Indexation does not cost the companies a lot of money, but failure to index will mean difficulties and sacrifices to the permanently disabled.

CAC is pleased to see that insurers may be assessed \$100 million for their share of medical and hospital care that accident victims receive through OHIP. We realize that this merely transfers the cost from all taxpayers to car drivers through the insurance system, but CAC is an advocate of the principle that those who do not use a service should not have to pay for it. And there are lots of people who don't drive cars.

Consumers are primarily interested in seeking the best price. Someone else said this, that price was what they were looking for, and that's true. They don't pay as much attention to the cost of accident benefits since few believe they will be in an accident, or in an accident that is their fault. Consumers expect that, having paid insurance premiums for all their driving years, their insurance company will look after their damaged cars and their economic losses. If companies fail to provide these services at a reasonable cost, we recommend that the government look carefully at a government-run, no-fault plan, as in Quebec and Manitoba.

To sum up, the new proposal is a fair compromise between the existing no-fault system and the plan presented by the insurance companies called OMEGA. Even so, we regret it was felt necessary to abandon the search for a pure no-fault, affordable plan. Bill 164 was a complex document, difficult to sort out, hard to administer and fraught with possibilities for overpayment to unworthy claimants. Instead of tightening up Bill 164, and with the very best of intentions, the framers of this new proposal have made the system almost as intricate and, by introducing more tort, made the plan expensive, arbitrary and unfair.

This plan means more costs to consumers, more expense to the insurers, and more money in the hands of the lawyers.

Thank you for this opportunity to speak to you.

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Mr Crozier: Thank you for your attendance this morning. I think you've given a very reasoned description of where you feel the Consumers' Association of Canada is. It's interesting and great to hear from someone who represents consumers.

I don't know whether you were here this morning, but the trial lawyers literally assailed the insurance industry by saying it was deliberately manufactured by a cynical and manipulative industry. They called us cruel legislative bunglers, and yet they propose to represent ordinary people. Now we have another group who represents ordinary people and you're suggesting that there should be some balance between tort—in other words, you've pointed out that a lot of the tort goes to lawyers' fees and it increases our rates so there should be some sort of balance.

Can you give us some idea of what it is that consumers are willing to give up in the way of tort in order to have reasonable insurance rates?

Ms Anderson: I'm afraid a lot of people have the wrong idea of how valuable the right to sue is. I think we find that coming over from the US, where everybody seems to rush to a lawyer to right all wrongs. It's costly to employ a lawyer. It's very upsetting and, as was stated, it's an aggressive system, it's antagonistic. You get into the hands of the tort system and you've lost control. The lawyers take over and there you are, just a victim really, having to pay the bill at the end, which often is far more than you really thought it was going to be.

Mr Kwinter: I just want to tell you how much I appreciate your message and the fact that the major area of concern for the consumer is the price of their insurance.

Ms Anderson: That's right.

Mr Kwinter: And I think that message has to be repeated over and over and over again. That's why we're here, to deal with the price of insurance.

Ms Anderson: Exactly.

Ms Lankin: I also appreciate your presentation and I want to pick up on the discussion about the maximum income replacement benefit being lowered to \$400 weekly. I received a phone call late last night from a gentleman in London who had been watching the hearings, and this is an issue that he felt needed to be raised. I didn't admit this to him at the time, and if he's watching I'll admit it to him now—I hope I get his story right—I was asleep when he called and the first couple of minutes I'm not sure I got everything that he explained to me.

He had an accident in late 1990, so it was under OMPP. There was a \$600 cap at that time and a very stringent threshold in terms of the right to sue. He has entered into the tort world, and here we are in 1996 and he still hasn't had his court date; it still hasn't been settled. The income replacement cap at \$600 at that time—and you may remember that it was originally proposed to be \$450 and through the OMPP hearings it got moved up to \$600. Over the period of time, he's lost his house and he's experienced incredible personal financial difficulty for himself and his family.

I think you make an interesting point about more people will be forced, if they think they're not at fault, into the tort system with that low a benefit. Could you just talk to us a bit more about that?

Ms Anderson: I guess we were so much in favour of the pure no-fault system without tort that I haven't really thought that through. We recommended to Mr Sampson, when this bill was being considered, that the level be put up to \$600.

Let me tell you why we didn't recommend \$1,000 when \$1,000 was in Bill 164. I was speaking to a man—I'll mention his name because I'm sure you all know him: Willy Handler—in the Ontario Insurance Commission who is an expert on all the rehabilitation and medical and income replacement. He said very few people at \$1,000 would use the system because they are people who probably are earning gross around \$90,000.

People earning \$90,000 are not the average worker. They work for large companies, they work for law firms or they work for the government or something and they usually have accident and sickness plans of their own, in

which case they will never use the accident and sickness that's in their car insurance because car insurance is not first payer. Your own plan has to pick up your accident and sickness, then the auto insurance comes in last, so that in effect he felt that people who are earning over \$600 or perhaps the \$1,000 are subsidizing the others. It was an interesting twist on the whole section.

Ms Lankin: But your position is that \$600 is more—

Ms Anderson: We recommended \$600, yes. We thought that was a better level.

Ms Lankin: And that \$400 will cause difficulties?

Ms Anderson: I don't have access to all the information, of course, the insurance companies have, but I looked at some Statistics Canada figures and they said in one point—it was 1994 figures—that the average income earner—single, actually—in cities of over 500,000, which would mean Toronto and most of the cities in Ontario, was \$29,000 and something. I had an actuary look at the \$400—that is 85% of your income—and he gave me a figure of \$31,000 as the amount of income that would represent. So really, in effect, it's just a couple of thousand more than the poverty level. I thought that was amazing to discover. I felt that we don't want to see people being reimbursed almost at the poverty level. We'd like to see a decent level, which we thought \$600 was.

Mr Douglas B. Ford (Etobicoke-Humber): You've given an excellent presentation here, and I have a question for you. The insurance commission publishes comparative profiles on the cost of auto insurance. What else can be done by government or industry in a cost-effective manner to assist consumers in comparative shopping for the best price and quality in purchasing auto insurance?

Ms Anderson: I think you heard me say that I'd like to see the companies put their schedules on the Internet. Not everybody I know has a computer, or even if they have a computer, are they on the Internet. But it's the coming thing and more and more people will be on the Internet as it comes along.

I think that's the only place that you can provide the enormous amount of statistics that are involved in publishing schedules. I checked with a computer expert, actually, to see whether it was even possible, and he told me that all the airlines publish all their rates for all the cities in the world on a regular basis and constantly update it. I couldn't see how that was very much different from having the schedules of the insurance companies on the Internet.

I also recommend, as you see, that more figures come out of the OIC in their guide because their guide was good. It had six profiles in quite a few cities which was more than before, but it still only handled about 25 or 30 companies and there are well over 130 companies doing business here in Ontario. So I thought that the only answer is the Internet.

Mr Ford: The Internet is fine, but you wouldn't be covering the major portion of the population.

Ms Anderson: Not yet, no. But I don't imagine the companies are ready to do it tomorrow anyway.

Mr Ford: Yes. What other suggestions would you have?

Ms Anderson: The guide.

Mr Ford: Just the guide?

Ms Anderson: I think the guide to insurance, yes.

The Chair: Thank you very much, Ms Anderson, and we thank the Consumers' Association of Canada for their presentation today.

Ms Anderson: I want to apologize for the fact that our submission was on double sides, but we did that to save paper.

The Chair: Thank you very much. We'll stand in recess until 1:20 pm.

The committee recessed from 1209 to 1323.

The Chair: If we could call the meeting to order. There is a meeting of the government going on, but they'll be in momentarily.

CANADIAN PARAPLEGIC ASSOCIATION ONTARIO

The Chair: We have with us the Canadian Paraplegic Association Ontario, Michele Meehan. Welcome.

Ms Michele Meehan: Thank you. I am the director of rehabilitation services for the Canadian Paraplegic Association Ontario. The Canadian Paraplegic Association is a non-profit association that has provided rehabilitation services, support and information to people with mobility impairments for over 50 years. CPA Ontario provides service to over 4,000 people in the province. Our funding comes from the provincial government, charitable donations and fees charged to auto insurers.

Every year there are approximately 350 new spinal cord injuries. About half of these are due to auto accidents, so we're talking about a relatively small number of people who are affected, but the severity of the injuries sustained are among the most severe in terms of auto-related injuries. The survivors of these accidents require long-term, intensive services that are costly and therefore of great concern to insurers. We really believe it's important that the insurance industry be in a position to respond to their needs quickly and effectively in order to maximize individuals' independence and productivity while minimizing the costs.

CPA Ontario fully supports the goals of the current government in providing basic coverage, keeping insurance costs down, making insurance affordable and avoiding shifting costs to the public sector. We believe that insurance premiums should be used to pay for the consequences of auto accidents. We hope this can be accomplished without compromising the legitimate needs of people who sustain severe permanent impairments and require significant assistance in their rehabilitation.

We are very pleased to see that the proposed legislation treats people with catastrophic injuries as a distinct group who have greater access to medical rehabilitation and attendant service benefits. We're also pleased to see that the benefits continue to be available to address the comprehensive range of needs that people experience after such injuries, including the social, vocational and psychological.

There are four areas that we have some concern with that I will address in order. They are: the dollar limit proposed on attendant service benefits; the proposed definition of "catastrophic impairment"; the requirement of signed treatment plans signed by health professionals before rehabilitation benefits are provided; and the link

between the attendant service benefits and the house-keeping and home maintenance benefits.

The proposed legislation indicates a maximum attendant service benefit of \$1 million, with a monthly maximum of \$6,000, unless an individual has had the foresight to purchase additional optional coverage. This system would in some cases penalize the most severely injured individuals and would end up passing on costs to the overburdened public system. This would end up years from now in inappropriate living situations for individuals, such as nursing homes and chronic care facilities, once their benefits have expired. Not only would these situations limit the productivity and independence of the person with the injury, they would drive up the overall cost of support to this individual. Passing the costs on to the public system doesn't help the auto insurance premium payer who is also a taxpayer.

For people with severe permanent disabilities, the need for attendant services doesn't disappear or decrease over time. In fact, as people age, their need for personal assistance is likely to increase. Attendant services are crucial for the survival of the people who rely on them. They're not optional. They're not a luxury. Attendant services have to be maintained in order for an individual to accomplish any other rehabilitation goal such as employment or participation in the community. The one that's outlined in the proposed legislation could work as a disincentive for people to participate in vocational retraining and social rehabilitation if they're concerned that their attendant benefits are going to expire and they're going to be warehoused in a chronic care facility.

We believe that the benefit must be granted based on a legitimate need, not whether the person had the foresight or lack of foresight to purchase an optional benefit. When we make decisions about purchasing auto insurance, each person assesses the probability of needing extensive coverage, extensive benefits, and the probability is quite low, but for the people who do sustain these severe injuries, the need for the service is huge.

For these reasons, we believe this benefit should not have a cap on the dollar amount over a person's lifetime. We also believe the monthly limit in the current legislation of \$10,000 is more reasonable for those few individuals with a high level of disability, such as those with a high spinal cord lesion or a combined spinal cord and head injury. While this will increase costs for some individual cases, we believe the number of people who would require services above and beyond the proposed limits is quite small and it would not impose a burden on the insurance industry. It is imperative that the insurance industry understand the essential nature of this service and that it is prerequisite for every other rehabilitation goal.

I'd like to address the definition of "catastrophic impairment." We have some concern with this. As it reads now, an individual must have a specific diagnostic label to fall under to meet the threshold for catastrophic. These labels are really useful for helping to facilitate communication, particularly between health care professionals, but they don't give us much information at all about an individual's functional abilities. We're really concerned about the potential for differences in interpretation of these labels that would unduly restrict the

qualification for medical rehabilitation and attendant service benefits. For example, it's not clear whether the terms "quadriplegia" and "paraplegia" would be applied with regard to an individual's functional mobility, or whether such a description would be used in a restrictive clinical manner.

1330

Let me give you a couple of examples that will make this more clear. When a person has a spinal cord injury, sometimes it's possible that just a portion of the spinal cord is damaged. So there is still communication between, for instance, the legs and the brain. They may end up with some functional use of their legs but still have the label "paraplegia." Alternatively, if somebody has a severe orthopaedic injury, they may need a wheelchair for mobility but they clearly don't have paraplegia. Their needs in terms of use of a wheelchair, accessible living environment, adapted work area, are exactly the same. So we would strongly suggest that this definition be amended to include a reference to their residual functional abilities to more accurately reflect the spirit that's intended here.

The third thing I would like to address is the need for treatment plans. We're pleased to see that treatment plans are required prior to the provision of service. We hope this helps to eliminate some of the unnecessary and costly services that fail to promote rehabilitation goals. These plans are a very valuable tool for articulating rehabilitation goals and ensuring that the insurer, the service provider and the injured individual have a common understanding.

We would like to ask that the legislation clearly state that professionals submit plans specific to their area of expertise. Over the last several years, we've seen advances in rehabilitation, research and technology that have led to diversification and specialization of related professions. We've come a long way and I think made great progress from times when physicians made every recommendation, from the requirements for home renovations to vocational aptitude testing. We're fortunate now that we can work as a team and bring a greater depth of knowledge than any single profession could hope to provide. We'd like to see the legislation respectfully support the diversity that exists in rehabilitation professionals and the expertise that each brings.

In keeping with this, this definition of a rehabilitation plan fails to allow for the rehabilitation plan generally written by a case manager. Many case managers are not regulated health professionals. This kind of written plan, though, articulates the long-term rehabilitation goals, integrating the medical, psychosocial and vocational aspects of functioning, and it's a really important element in ensuring successful completion of the entire rehabilitation process. We would hope that the committee would specifically include reference to rehabilitation plans as written by case managers in the legislation.

We're well aware that many insurers have well-founded concerns about the quality and the cost of case management services and, in the present market, we share many of those concerns. However, we know that there are good-quality case managers, and when that service is

provided properly, it's very valuable in advancing the rehabilitation goals and maximizing an individual's productivity and independence, and keeps costs down over the long term. The services of qualified individuals should be recognized and included in the delivery of services to people with injuries.

The last point I would like to address is the housekeeping and home maintenance benefits. Under the proposed legislation, a person with a catastrophic impairment qualifies for ongoing housekeeping and home maintenance benefits only if he or she also qualifies for the attendant service benefit. However, there are individuals who are able to independently manage all self-care activities but require a great deal of assistance with the larger housekeeping and home maintenance activities. We would suggest that these benefits be available independently of the attendant service benefit upon assessed need for them.

It also indicates in this proposed legislation that in assessing the need or the benefit of housekeeping and home maintenance, an individual's usual role is considered. We would suggest that an individual's developmental stage also be considered in this, as well as the potential for a change in circumstances. For example, a person injured when they are a child would not be expected to be taking on housekeeping and home maintenance. However, if the disability is permanent, that role would become appropriate for them as they reach adulthood. Similarly, in many families following a serious disability divorce occurs, and of course sometimes spouses die, and it's important that people have access to this benefit should their circumstances change.

Just in closing, I'd like to say we recognize the complexity of trying to balance the need of policyholders, insurers, people injured in accidents and rehabilitationists and we appreciate the apparent effort that's gone into this.

We appreciate the opportunity to address the committee today and hope that our recommendations will be considered. I'd be glad to answer any questions.

Ms Lankin: I truly appreciate your presentation. I think you've made some very good points about attendant care and the nature of those services and the few people who will require something that will go beyond the \$6,000 cap, and also the separation of housekeeping from attendant care and the developmental level change considerations, because they're all very important points.

I wanted to ask you a little bit about the definition of "catastrophic impairment." We've heard from some different groups, particularly people who are involved with the brain-injured, who said that the Glasgow coma scale, for example, is not appropriate; it has to be the Glasgow outcome scale, looking at functions.

How would you see that reflected in the legislation? You say, "Include a reference to residual functional abilities," but there needs to be, in different types of impairment, different ways of judging that functional ability and the outcomes. Could you talk about what's in place out there for assessment?

Ms Meehan: Sure. It's a difficult question, there's no doubt about it, and each kind of injury is going to result

in some different problems, but that's exactly why I suggest the need for a functional outcome. You need to look at the individual's ability to carry out particular tasks that are essential to everyday living. Some of those might be things like work, leisure activities, self-care, driving, and there's going to be all different reasons that people can or can't accomplish those tasks, but the functional outcome looks at whether it's actually done or it's not done, as opposed to the reason why.

Ms Lankin: Is there an easy way to put that into words for the government to instruct the industry to follow?

Ms Meehan: Not an easy way, I would have to say. No, there is not. It really would require individual assessment and looking at specific tasks that would be considered essential, and that would need consultation from groups like our organization as well as groups that represent other disabilities.

Mr Sampson: Thank you for your presentation. We indeed struggled with the definition of the phrase "catastrophic impairment," and that's why we chose to try to add that catch-all section, section (f), under the definition of "catastrophic impairment" that says, "any other impairment or combination of impairments similar in severity to the impairments described" above. It was an attempt to say you can't really pigeonhole everything. If we've missed something, maybe there's some catch-all component.

We've heard some presentations from the industry saying, "Well, that's so broad you could drive a truck through it," I think is what they'd like to say but they didn't quite say.

Mr Crozier: Your own people said that.

Mr Sampson: Some people have said that, yes.

I wonder whether you could give us some help as to how we can further define that one, because that's the real struggling point.

Ms Meehan: I would say again I would look at identifying key functions of daily living. There's a tool called a functional assessment inventory that attempts to do that. Another criterion that you might look at is whether the person's able to accomplish something independently. Do they require an assistive device or the help of another person for mobility, for self-care, for driving, or are they able to do that without those things?

Mr Sampson: Is there any research that you can direct us to that would help us to further define that?

Ms Meehan: I certainly could find some references. I can't think of anything off the top of my head, but I'd be glad to do that.

Mr Kwinter: In your brief, you call for recognition of rehabilitation plans written by case managers. Yesterday we had a member of the legal profession who spends all of his time dealing with insurance claims at the Ontario Insurance Commission. He was quite animated in his presentation, and one of the things that he said was that case managers just make telephone calls. He said, "Why are you in any way supporting case management? All they do is make phone calls, and surely we don't have to pay somebody to make telephone calls." I'd be interested in your reaction to that statement and if you could give us an idea of how you see the role of the case manager.

1340

Ms Meehan: A good case manager does a lot more than make telephone calls. I am well aware that there are case managers who do little more than that, or pass along reports between professionals. A good case manager helps a person to articulate their long-term life goals, again in a functional way.

What tends to happen without good-quality case management is a variety of treatments that aren't well coordinated. I've heard people say: "Well, I keep going to physio, but I don't understand why. What's the point? What's it going to lead to in the long term?"

We're working to get people back to work, back into their homes, back into their communities, functioning as members of their family, and a good case manager will help the person identify those goals, first of all, because most people don't think about what it is they want to accomplish in their daily life. We get up, we go to work, we go home to our families; it's very simple. But when you have a serious injury, it becomes much less simple.

So articulating the goals is the first thing, and then making sure that all of the service providers that are involved are working towards those goals and supporting that with the individual. If the service providers aren't talking to each other or coordinating through a central thing, I've seen people working towards opposite kinds of goals, and the individual loses out. It becomes very expensive, it takes a lot longer, everybody's confused and the plan breaks down. Each service provider might come under attack for not providing a good-quality service when they may be. It's just not coordinated. Does that help?

Mr Kwinter: Sure.

The Chair: Thank you, Ms Meehan, for presenting to us and sharing the Canadian Paraplegic Association's thoughts with the committee.

COUNTY OF YORK LAW ASSOCIATION

The Chair: Is the chair litigations section of the county of York, Michael Shannon—

Mr Michael Shannon: It's the County of York Law Association.

The Chair: Please, if we can move you up 20 minutes, that would be very helpful.

Mr Shannon: That's fine.

The Chair: And it is the County of York Law Association. We have your presentation. You'd like to make a presentation, and we have 20 minutes.

Mr Shannon: I want to thank the committee for allowing me to appear here this afternoon on behalf of the County of York Law Association. We are an organization of 4,000 members, lawyers who practise within Metropolitan Toronto. I also personally act for injured victims of other persons' negligence and have done so through the past three insurance schemes.

The theme that I've often found in the last five and a half years is one of frustration. Clients come into my office and they're frustrated. I think this is a good opportunity for the government to correct the problems of the past two insurance schemes, namely, OMPP and Bill 164. It's an opportunity to implement a system which is

respected and not ridiculed, and it's an opportunity to say to innocent victims of others' negligence, "We care, we respect you and you have rights."

As I indicated earlier, over the past five and a half years I've had people come in who are injured and are frustrated because I've had the unfortunate circumstance of having to tell them, "I'm sorry, your injuries are not serious enough to either meet the threshold, or financially it would not be in your best interests to pursue a claim."

The purported client often says: "Well, what's the use in having auto insurance? If I've got coverage through my work for income loss and if I've got coverage through my work for medical benefits and I can't sue, why am I paying \$1,500 a year for this?" I lift my hands in the air and I say, "I'm sorry, I can't give you an explanation that's obviously going to convince you."

They're frustrated. I'm seeing more people recently who are appearing in my office who were driving without insurance. There's that frustration that has filtered down and people are saying, "I'm going to take my chances." There's the frustration of the people who say, "Listen, if I'm injured and I can't do anything about it, why shouldn't I just go and run that person over?" There's a real frustration that a lot of people can't understand and deal with.

I became a lawyer, and especially in this area, to help people. That's what I wanted to do. I couldn't stand the sight of blood so I couldn't become a doctor, so I thought, "At least I can do something to help people." As a lawyer, and as a husband whose wife has suffered what I guess would be classified as a minor injury which has been ongoing for the last four years to the cervical spine—she lost time from work and is in constant pain—I'm frustrated also. It's a frustrating system because it's unfair.

The issues or problems I wanted to deal with this afternoon are primarily with respect to the \$15,000 deductible, fatal accident claims and the lack of provision for a loss of support or dependency and the areas dealing with income loss. And if there's time at the end, then perhaps I could briefly comment on the notice provisions with respect to the tort and accident benefits.

The \$15,000 threshold also has a verbal threshold which is proposed to stop people from bringing claims. With the \$15,000 threshold, it sets up two barriers for people to try and cross. Now, I'm not a supporter of a verbal or a financial threshold, but I realize that if we're going to make a system in this province that's affordable and fair, there's going to have to be some compromises. The difficulty I have is that a \$10,000 deductible under Bill 164 was already, in my respectful submission, too high. Now there's a proposed \$15,000 deductible.

If I could give you a couple of examples, it may help you in understanding where I'm coming from. If I'm a person who has suffered an injury to their cervical spine, I've suffered ripped muscles or ligaments, I've got pain every day, it interferes with my ability to work, it interferes with my ability to participate in my recreational activities, I'm required to take medication, I have to see my physiotherapist on a weekly basis, I have to go see my family physician on a monthly basis—and this has been ongoing for three to four years. I finally get a

prognosis from the doctor and he or she says to me, "Sorry, Mr Shannon, but your problems are chronic and they're not going to go away."

A court would assess an injury such as described in the range of \$15,000 to \$25,000 for pain and suffering. Under Bill 164, with the \$10,000 deductible, if you were to get to the high end of the range, it may be something you would contemplate pursuing. However, under the \$15,000 proposal, if you did a cost-benefit analysis, it really doesn't make a lot of sense to bring a claim for \$15,000 to \$25,000 when right off the top \$15,000 is going to disappear, because you may incur costs of \$5,000 to \$15,000 to recover it. It just doesn't make a lot of sense and I have to, unfortunately, discourage people who come in and tell me about those injuries.

Another example of an injury where people are becoming frustrated is a fractured arm requiring an open reduction. They've had surgery after the accident. Hardware has been put in to stabilize the injury. They require further surgery to remove the hardware. They are left with an unsightly scar. The person has limited range of motion, pain and stiffness. It interferes with their ability to work and recreate. A court, in a situation like that, is going to award something in the neighbourhood of \$20,000 to \$25,000 for pain and suffering. Once again, it's not a case that is likely to be pursued with a \$15,000 deductible.

1350

Let's go to a further extreme. You have a fractured tibia and fibula: daily pain, medication is required, physiotherapy. It's a weight-bearing joint. There's a 10% to 15% chance of developing osteoarthritis. A court is going to award someone with those problems \$25,000 to \$30,000. This is a borderline case as to whether you are going to pursue it with the \$15,000 deductible.

The last example, and one I'm often hearing from people, is the mild head injury and the person who shows some cognitive deficits, but where there's no real objective evidence to support the mild head injury. The MRI doesn't show there's a problem there. Insurers, frankly, are fairly sceptical, and they say, "This is the whiplash injury of the 1990s." They're saying, "There's no proof and I don't believe it."

The problem is that we're just learning about these injuries, and just because an MRI doesn't pick up this injury doesn't mean there isn't a problem there. We may not have the technology at this point to pick up those injuries. I like to use the analogy of the Hubble telescope. Before the Hubble telescope was developed, we weren't aware of the universe out there, other than what we could see with our regular telescopes. Now we're aware there's something out there beyond. There's probably a technology that in the next few years is going to come out and develop and make us realize that, Jeez, these people have mild head injuries, there is some objective evidence, and those complaints of memory problems or they're "just not the same" are legitimate.

A court, hearing this evidence, will probably say: "What's it worth? It's worth anywhere from zero to \$50,000." How many people, with expert costs in proving this type of injury, are going to want to risk going to try the case for a \$15,000 deductible, spending \$15,000

possibly in expert reports and collecting a maximum of \$30,000 or \$35,000 after the deductible?

What we're proposing or what we would like to see would be a deductible that is a lower level, and \$7,500 is something that we would like to recommend.

The second problem or issue I wanted to deal with today was the fatal accident claims and loss of support and dependency. I understand possibly this has been dealt with already and that there may be a reason it wasn't in the draft legislation. But I just want to raise the fact that there's no provision for loss of dependency and support in fatal accidents.

An example is a breadwinner who is fatally injured and is earning \$50,000 at the time of the accident. The spouse is a homemaker who is looking after two infants. The loss to that family is obviously going to be catastrophic emotionally, but also financially, because that person is going to have to stay at home with the infants. She or he may not be trained to go out and earn a living equivalent to what the breadwinner was, and they may be forced on to welfare or some sort of social assistance.

The third issue or problem I want to deal with this afternoon is with respect to past and future income loss. I understand the proposal is to allow people to sue for 85% of their net income loss and all I can say is that in most circumstances this is not going to be fair.

An example would be if we had a young person who had just entered the workforce, is seriously injured and unable to work ever again, and that person's current earnings don't really reflect their potential, they haven't met their prime earning capacity. This person is going to be pigeonholed into an area which clearly is not fair if it's an 85% net future loss of income based on what they were earning at the time of the accident.

An even unfairer example would be a high school student who intends to go on to university, is injured and can't, for whatever reason, go on to university and can't work. How are we going to measure their net loss of income? I can't figure out a way where I can imagine somebody receiving fair and reasonable compensation for their losses in the future in that situation.

Not only are persons who are injured and unable to work in the future not being treated fairly, but people who have been injured but are forced to either switch their focus or careers, are not going to be treated fairly under this proposed legislation. If I can give you an example, perhaps it's a young person who is interested in becoming a member of provincial Parliament and they lose their voice and they're unable to talk and instead go on to become a caretaker or something else like that. They're not going to be fairly compensated. They're going to suffer a future diminution of income.

The proposed legislation has got to speak to diminution of income and ability to earn income in the future. We propose that 100% net loss of income be allowed, 100% gross future loss of income be allowed, because the courts have a tendency to reduce future loss of income claims for negative contingencies and reductions of 20% to 30% are common. That will also pick up any sort of future income losses as a result of a person not being able to move up the financial ladder in their business or occupation. What we're proposing is claims for future

diminution of income also and loss of competitive advantage.

1400

Mr Spina: Mr Shannon, thank you for subbing at the last minute a bit ahead of time. Just quickly, it really keys in on the last point that you indicated, and that was the amount of the future diminution of income. I like these nice legal terms so I like to get my tongue around it, but not too often. I'll leave it to lawyers like Mr Kormos.

What we're talking about is not just the ability to—the loss of income when you have a specific occupation or career direction, but you're also looking at the loss of the competitiveness or the ability to be able to create that career. My problem is that I can appreciate it's unfair that perhaps you have a high school student who's a bright kid, maybe athletic and is now injured, but there really is no clear-cut direction. In grade 9, my daughter said she wanted to be a doctor, but that doesn't mean she ever will be.

I'm having difficulty grasping how far that would go because obviously one of the big concerns we have is the stability of premiums to the consumer, and what we're looking at here is perhaps more tort and more compensation for the victim.

Mr Shannon: I agree with you. That is a concept that has given not only lawyers but judges difficulty in grasping. All I can say is that the courts will look at a number of things when determining if somebody has suffered a loss of competitive advantage or future diminution of income.

Using your example of your daughter who's a grade 9 student, they'll look at what her marks are like in the previous years. They'll look at what are her siblings doing with their lives. Are they going on to university or have they dropped out in grade 10? They'll also look at what the parents have done. It's not fair, but it's something that is considered by the courts and they do their best to be fair and reasonable.

They take a number of things into consideration, but obviously no one has a crystal ball and no one is going to be able to tell you that your daughter is going to become a surgeon and rather she becomes something else. It is a very difficult thing to do and the courts seem to be handling it, but they're very careful when they deal with it.

Mr Kwinter: Yesterday one of your colleagues appeared before us and made the same point about 100% reimbursement on income and suggested the way to fund it—it would be neutral—would be to extend the one week of non-payment after an accident to two weeks, as it's covered under the Workers' Compensation Board. Do you have a reaction to that?

Mr Shannon: I don't think I can comment on that because I'm not sure whether that would be satisfactory or it would be paying them too much. I'm not sure because I don't have an opportunity to look at the figures, so I'm not sure what an actuary would say as far as if that's going to make a difference.

Mr Kwinter: Right now you're recommending that it be 100%.

Mr Shannon: What I'm recommending at this point is 85% for net loss of income up to the date of trial. In the

future, I'm recommending 100% loss of income for gross loss, which is generally reduced by courts 20% to 30% for negative contingencies.

Mr Kormos: I'll use no more time than Mr Spina did. Mr Spina should know, he's quite right, I'm a lawyer. I'm not a personal injury lawyer, though. I was a criminal lawyer, which is probably far more suitable if you're going to enter politics in this province.

Mr Sampson: Or be a leader of one of the parties.

Mr Kormos: I'm going to use as much time as Mr Spina. Mr Shannon, the one illustration—and again, I don't want to be overly critical, but referring to a person who no longer spoke being unable to assume a position in Parliament, Gary Malkowski of course sat in this Parliament for five years, deaf and speechless, but he communicated by signing. Please revise that one in future submissions because I think it doesn't address the issue fairly.

Mr Shannon: Okay.

Mr Kormos: Look, we haven't received any actuarial information on what these changes are going to save or indeed what they're going to cost. The fact is that when you look at the so-called tort here, the income replacement tort, 85% of net above the cap of \$400, really isn't all that is, is simply no-fault benefits in yet another name?

How can the government talk about restoring tort—I know they want to keep a promise, among many, that they made in their so-called revolutionary blue book, but when you're talking about so-called tort for economic loss being restricted to 85% of net that is based on the income of that person at the time of injury, really isn't that nothing more—because the number is remarkably identical to the 85% of net being the no-fault income replacement. How is that any meaningful restoration of tort rights when we're looking at it in the context of this so-called package?

Mr Shannon: I'm not sure whether it is a reasonable restoration of tort rights. I think a past loss of income of 85% for net loss of income and a future loss of income of 85% is not reasonable in many circumstances.

Mr Kormos: A whole lot of folks think it's a broken promise. Do you?

The Vice-Chair: Thank you, Mr Kormos. That's the time we have. Mr Shannon, on behalf of the standing committee, thank you very much for your presentation today. Have a good day.

MARVIN BLAHA

The Chair: The next delegation before the committee is Marvin Blaha. Good afternoon and welcome.

Mr Marvin Blaha: Thank you. I apologize to everybody for being late. I got tied up in a little bit of traffic.

The Vice-Chair: Yes, we stepped back to the 1:40. I'm glad that you're here. You'll have 20 minutes.

Mr Blaha: I won't take that long. First of all, I'd just like to tell you a little bit about myself. My name is Marvin Blaha. I live in Orangeville. I'm married. I have four children. My wife drives and I drive. I decided yesterday to come here today, I phoned and I was fortunate enough to find a spot. I'm here because as a member of the public I'm angry.

My insurance went up \$387 this year from last year. We have not been involved in any accidents. Our driving records are clean, with no convictions or even any charges. I would like to know basically where the insurance people can increase my insurance by \$387, convicting me for other people's errors.

I'll go a little bit further. I used to be a policeman, in 1988 I quit the police force and I opened up a business. I defend people in court for traffic tickets. I would say about 20% of the persons who come into my office are charged with driving with no insurance and making a false statement to the ministry. Making a false statement to the ministry, I don't know if you're aware of that; it's when you go to get your validation sticker and you put down your policy number and then you sign your name.

I went to get my insurance in August. They didn't even ask me if I had proof of insurance there. I just put a number down, et voilà, I got my sticker. This is one way, stopping it at the ministry, that you can stop people from driving without insurance.

I heard my friend here before me indicate that the reason people are driving with no insurance is because they're frustrated. No, they're not frustrated. I would say the average persons who come into my office who are charged with "drive, no insurance" are working people. They can't afford to pay \$2,000, \$1,600, \$3,000 a year. It's just impossible for them to do it. What happens? They get involved in an accident. The people who are in the car basically make claims. They know there's a buck to be made out there. It's us who have a clear driving record who are forced to pay for these people. Something has to be done about it.

I would like to say something about the accident reporting centres in Metropolitan Toronto. What happens now is when somebody's involved in an accident, a property damage accident, they phone the police to come to the scene and they are told to go to an accident reporting centre.

I'd like to give you a scenario. Two people are driving along the street. Mr A makes a lane change and hits Mr B. Mr B calls the police and the police tell him they have 48 hours to go to the accident reporting centre. In the meantime, during that 48 hours, Mr A has time to talk to his friends, and his friends tell him, "If you go down there and say you made a lane change, you're going to be at fault and your insurance is going up." Mr B goes down to the reporting centre and tells them the truth. Mr A goes down to the reporting centre and says, "No, I didn't make a lane change; Mr B made a lane change into me." I ask you, whose insurance goes up? From what I understand and from the complaints into my office, both parties' insurance goes up because they are found 50-50 liability with the insurance companies. Why is the innocent person charged with the accident?

Basically, in a nutshell, I'm just frustrated and that's why I'm here. I'm fed up with the insurance rates; I'm fed up with the insurance companies saying they're not making a buck. If they're not making a buck, why do the banks want to get into it? That's all I have to say.

1410

Mr Crozier: Thank you, sir. I wanted to ask a question and I think it's one that can be asked of insurance

companies, lawyers, anybody who comes before us. This isn't a trick question, but what would you consider an affordable premium for the average driver?

Mr Blaha: An affordable premium for the average driver who's never been in trouble, with a clean record, never had any at-fault accidents—I would be happy to pay \$750 a year, \$1,000 a year, but \$1,800—

Mr Crozier: But you pay more than that. I had hoped actually that you would say you don't know, and that's what we're trying to get at. We're trying to find out—because rates are at the bottom of this, there's no question. The government's not happy with the rates that are being predicted, the rate increases that are being predicted. The public I think perceives, as you do, that insurance rates are too high. They want to see a reduction in them, and I assume that's what you'd like to see. That's why we're here, because of the rate question, not necessarily because of the at-fault and all this kind of stuff. "If my rates are okay, I'll take what comes to me."

Mr Blaha: Just to be honest with you, sir, if I answered, "I don't know," then you wouldn't know.

Mr Crozier: That's right.

Mr Blaha: This is what I can afford and what I feel is reasonably fair.

Mr Crozier: If that's the case and we have bad drivers, who should pay then? Should the bad drivers pay?

Mr Blaha: The bad drivers should pay.

Mr Crozier: Yes. If that's a working person, and it works out that that premium is \$3,000, you're telling me they can't pay that.

Mr Blaha: That's correct.

Mr Crozier: You see. So that's the dilemma we're in.

Mr Blaha: Here's the dilemma. If one of these bad persons who have no insurance should go each year to the ministry, all the clerk at the ministry would have to say is, "Let me see proof of insurance." That's all they would have to say—no proof, no tag. What would happen then is, this person would be driving around with an expired validation sticker. I can tell you, from being a policeman, that I always kept an eye out for expired validation stickers because that was an easy tick on my record, and nine times out of 10 they wouldn't go to court. That's the way of stopping it, sir. When one comes to court for "no insurance," they should make the penalties a little bit stiffer. The average penalty out there today, I would say, 90% of the time is a \$500 fine.

Ms Lankin: You now represent drivers in court, so you have a perspective on this that might be helpful to us. I asked some of the insurance company representatives who were these good drivers who we going to get discounted rates, and we've not been able to get any kind of a definition from them about what a good driver is. Most of us think we are good drivers, but if you've ever had a speeding ticket, according to the insurance industry you're not a good driver. If there's ever been any kind of infraction you're not a good driver. I don't know if you have a sense in terms of the vast majority of the driving public. Would they qualify as never having had any indication on their driving record of any problem? If that's what the insurance industry suggests is a good driver, are many people going to see any reduction in their rates?

Mr Blaha: Problem drivers can be identified by their records. But let's face it, each and every one of us here today speeds. We have just not been fortunate enough or unfortunate enough to be caught. I don't see the answer to that. But as far as I'm concerned, a bad driver is somebody who comes into my office and has a long record, not just one conviction. I mean, one conviction is nothing, really. Everybody speeds. I would be lying to you here today if I told you that I didn't speed coming up here to make it on time.

Ms Lankin: I think you would find the insurance industry would say, "You're not a good driver then and you're not going to get the benefit of rate reductions," according to the industry.

Mr Blaha: According to the industry, all they have to look at is your record. If it was left to the ministry, then everybody would be a bad driver. I would say that everybody in this room at one time in their life has broken the speed limit. Does that make us all bad drivers?

Mr Kormos: One of the interesting observations: You made reference to basically insurance fraud, and that is people who use either counterfeit pink slips or don't have any at all.

Mr Blaha: That's correct.

Mr Kormos: The fact is that pink slips are coming from some insurance broker's office, because nobody's sitting down there with a photocopier running them off. But it remains that, wouldn't a system that insured and regarded the driver and the history of the driver as well as the vehicle, because there's some schizophrenia in the way insurance gets assessed here—there are a whole lot of licensed drivers who don't own vehicles. These people are on the road driving any number of vehicles but don't pay premiums. Isn't that a fair observation?

Mr Blaha: That's a good observation.

Mr Kormos: Wouldn't a system that insures drivers based on their personal records, vehicle owners based on the vehicle's record, and that ensures that you don't get a sticker or a validation tag until your insurance has been paid up in full be a far superior system to what we're experiencing in this province now?

Mr Blaha: Bang on.

Mr Kormos: Come back tomorrow at 1:20, when I make my presentation to the committee.

Mr Blaha: Can I pick up my cheque tomorrow?

Mr Sampson: I look forward to that presentation as well, Mr Kormos.

Mr Kormos: I hope you're going to be here, Mr PA.
Mr Sampson: Oh, I'll be here.

First of all, I wouldn't judge what the banks get into, by the way, as an indication of good business. I've spent some time in banks. I can tell you that they've made a few mistakes in their past, as well.

I want to talk about the uninsured driver issue because that's a bit of an item I think we need to seriously address, and we will. The number I heard through our initial consultation process, of people driving without insurance, was that it could be anywhere up to 20% of the insured vehicles in this province. If you work through the numbers, by the way, that's a significant amount of premium dollar that's not being paid and it's basically being spread over the people who are paying it.

I agree with you that the mechanism now at the MTO offices doesn't necessarily deal appropriately with the insurance and the plate sticker issue. We're looking at ways in which we can encourage the industry perhaps to provide live data to the MTO so that they don't have to ask the question; they know the answer when you come up to the wicket.

The dilemma is, though, that we're now issuing two-year licences, and some people are paying their insurance on a monthly basis. That's how the pink slips get out. So we're going to have to try to find a way to deal with that. But I think I hear you saying if we can try to catch these people or deter them from getting plates, we'll have gone a long to encourage them to pay the rates that they're avoiding and that are being passed on to other people. Is that the message I'm hearing from you?

Mr Blaha: The way I look at it, it would either force them to pay the rates or not have a licence at all.

Mr Sampson: Right. Do you have any problems with the last part, not having a licence at all?

Mr Blaha: I don't have a problem with that at all. If they can't afford to drive responsibly, then they shouldn't have a licence, but I think the onus is on you people here to make it affordable for the average Joe out there, for the poor guy who's making minimum wage who has to use his car to get back and forth to work.

Mr Sampson: I agree with you, but should those individuals get into the bad driving category because of their driving habits, they won't be able to afford it, so therefore they can't drive. Is that what you're saying?

Mr Blaha: If they're bad drivers, they shouldn't have a licence. That's my opinion. To be honest with you, my business is thriving because of the rates people pay for insurance, and I would like to see insurance rates come down. If the insurance people were fair, perhaps I would be out of business, to be honest with you.

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The Vice-Chair: Thank you, Mr Blaha, for a very candid discussion today. Be careful driving home.

PEOPLE AGAINST THE INSURANCE NIGHTMARE

The Vice-Chair: The next group to appear before the standing committee today is PAIN, People Against the Insurance Nightmare, I believe William Morris, Dr Kenneth Burgess and the return to politics of Renee Levesque.

Ms Renee Levesque: From referendum to rehabilitation.

Mr William Morris: As chairman of our proceeding here today, my name is William Morris. With me is Ms Renee Levesque, a rehabilitation counsellor, and Dr Kenneth Burgess. Our order of presentation will be Renee first, Ken next and then myself. We hope to confine our remarks to 10 or 11 minutes to leave enough time for questions, if possible.

Ms Levesque: We recognize that rehabilitation costs to the insurer need to be controlled, and we appreciate in theory the procedures for claiming medical and rehabilitation benefits, as outlined in the accident benefits draft bill. We also recognize that many accident victims are

able to resume employment and/or their normal activities after 15 sessions or six weeks of physiotherapy or chiropractic treatment, and for these insured persons, the procedure for receiving treatment benefits appears reasonable.

However, there are many accident victims for whom 15 sessions or six weeks of physiotherapy or chiropractic treatment are not sufficient, and many who require other forms of treatment instead, if they are to achieve or attempt to achieve their pre-accident status. There are also those who suffer catastrophic injuries for whom the rehabilitation process is much more involved, and this process generally requires many evolving treatment steps. For all of these accident victims, we have concerns with respect to the procedure for receiving medical and rehabilitation benefits.

From our reading of the draft bill, it appears an insured person could conceivably be without necessary treatment for four weeks, if not longer. This delay in treatment can occur not only at the beginning of the rehabilitation process or after six weeks of physiotherapy or chiropractic treatment, but also every time there is a new treatment recommendation or a recommended treatment modification.

Effective rehabilitation is not a series of starts and stops. At its most effective, it is a consistent process, with one form of treatment flowing gradually and smoothly into another. It should not be ground to a halt every time independent assessments are required, and it should not be replaced by assessments. Independent assessments and medical examinations are being widely used at present, and we feel that with the draft proposal as it stands now, there will be an even greater increase in the number of independent assessments. There do not appear to be any guidelines as to when an insurer can veto the health practitioner's treatment plan and the insurer could, as a matter of course, refer many, if not all, insured persons who require additional or other forms of treatment for a DAC assessment.

Every person has a fundamental right to have a say in his or her health care, and as long as the insurer can veto all or part of the rehabilitation treatment plan, the choice of treatment is taken out of the hands of the insured and his or her health practitioner. The procedure proposed in the draft bill assumes that the insurer has a knowledge of rehabilitation that an insurer cannot be expected to have.

Too many independent assessments and a disruption of rehabilitation while awaiting assessment results are not conducive to effective rehabilitation. They limit and impede the rehabilitation process; they deny the importance of early intervention; and they potentially give rise to illness behaviour, the development of chronic pain and psychological distress, all of which become costly to treat.

While the veto power is in the hands of the insurer, the proposed procedure for claiming medical and rehabilitation benefits could result in feelings of distrust, anger and hostility, and could create an adversarial relationship not only between the health practitioner and the insurer, but also between the health practitioner and the insured.

As it now stands, the draft bill offers no latitude with respect to treatment. If rehabilitation is to be effective,

and surely with the right to sue having been expanded, effective rehabilitation is extremely important, then more latitude is needed. Consideration needs to be given to allowing the health practitioner's treatment plan to proceed, with treatment costs assured, pending the results of the DAC assessment, if a DAC assessment is indeed required. Consideration also needs to be given to the establishment of definite guidelines to prevent unnecessary assessments. And to ensure treatment is not fragmented, but an evolving, cost-effective process, the coordination of treatment services by someone acquainted with all aspects of rehabilitation is fundamentally important. Thank you.

Dr Kenneth Burgess: My name is Kenneth Burgess and I'm a family doctor from Hamilton. Before being a family doctor, I was an emergency doctor. For about the last 20 years, since I graduated from medical school, I've been dealing on a daily basis with patients who've had motor vehicle accidents. I've seen them from all stages, from when they first rolled in the doors of the emergency department on until through their rehabilitation and then to their either getting all better and going back to work, or having chronic pain with all its problems.

The most important problem I see with the proposed legislation is, I think, that if it's instituted the health and the treatment and the rehabilitation of the patient will suffer. First of all, it's not clear who's in charge of the patient. Every service has to be pre-authorized, thus everything that I and my patient decide what's appropriate will be subject to the scrutiny of an insurance adjuster who's not trained in medicine and will always be concerned about costs.

As for the proposed treatment plan, I'd be very reluctant to commit myself to the format as it's specified in the legislation. It's completely unrealistic to be able to predict the future. No one can know when they first assess a patient how long it's going to take them to get well and how much it's going to cost, and so on and so on.

The second point I'd like to make is defining the minimum of the lesser of 15 treatments, or six weeks of treatments by a physiotherapist, is very rigid and limiting. What if my patient has two front teeth knocked out? Does that mean he has to go see the dentist, and then the dentist has to write up a plan, has his secretary type it, send it to the insurance company for authorization, receive a reply before being able to fix the problem? It doesn't make sense.

The third major problem I have with the proposal is the whole concept of the regulated designated assessment centres, or DACs. Under Bill 164, insurers can force the patient to go for independent medical assessments, or IMEs, on demand. I have a number of patients who've gone through a series of up to five IMEs over a relatively short period. Clearly, the insurer was hunting for a favourable opinion which would justify the income benefits or the treatment of the patient being terminated. In addition, insurers may present the professionals at the IMEs with carefully edited video surveillance tapes before they see the patient in an attempt to influence the assessment.

Under the proposed legislation, if the service provider I send my patient to submits a plan that's rejected, or

there's questions about the level of disability, the patient will continue to have to go off to a DAC. The draft legislation proposes taking some control of the DACs and setting up committees to oversee and define their operations and standards and so on.

I fear that these institutions as proposed are too close to the political process, and may well be hamstrung by limits on funding. There's nothing about the proposal that gives me any confidence that the system will not too often be used to underestimate disability or deny treatment.

The proposed legislation still lets the insurer get a patient assessed at any time as long as it's reasonable, but "reasonable" is not defined. Remember my patients who've had assessment after assessment. Is this going to stop that? I don't think so.

My fourth point has to do with the problem of independent rehabilitation consultants who've been coming with great regularity to my office and interviewing me about my patients in the past couple of years. What do I do if I decide that a rehab consultant is harming the patient's rehabilitation? There's no defined roles for these consultants. They're suggesting things that are costing a fabulous amount of money and pushing them. Are there no limits or guidelines or controls on their behaviour? I don't see any.

Finally, I'd like to remind the committee that it is becoming enormously complex to understand the medical-legal dilemmas that my patients are in. The toll of motor vehicle accidents on the physical and emotional health of individuals and their families is incalculable. I see this day in and day out in my patients. Please don't add to these traumatic effects by creating a system that doesn't work and is too complicated for anyone but lawyers to understand. Please don't add to the insurance nightmare. Thank you.

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Mr Morris: As the lawyer in the group, I'm not sure all lawyers understand this proposed plan or the predecessors. Some of you will recall that PAIN was created in late 1989. We are a coalition of innocent accident victims, health care professionals, business and labour representatives, police and lawyers.

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How prophetic Mr Nader was at that time. Since the inception of the Liberal program to date, well-run insurance companies have made large profits. For those that have not, I dare say the internal studies of these corporations have reflected poor management as a cause. Remember, profits can be adjusted by reserves. The scapegoat should not be the innocent accident victim. The government, for whatever reason, seems now to have presented a plan that will further line the coffers of the insurance industry, and again, to the detriment of the consumer and the innocent injured accident victim.

We heard a lot about the OMEGA plan. This was supposed to reduce insurance premiums to the consumer, increase benefits for the innocent accident victim and allow the insurance companies to make a profit. Our group is here to make representations on behalf of the innocent injured victims. Regrettably, the legislation proposed empowers regulations to be implemented that will further define the clauses and, unfortunately, no one has any conception as to what those regulations will be. In fact, the introduction of this legislation is premature until the public knows exactly what the government intends to do.

The government proposes to restore the right of the innocent accident victim to sue for loss of income and future losses, or at least this was its commitment, so I understand. Allowing accident victims to recover only 85% of net for the future is illusory, unfair and misleading. Indeed, it provides an appearance of smoke and mirrors.

You've had a lot of examples. You've already dealt with a fatal accident, with other speakers here and the lack of financial benefits for the surviving spouse and the dependents. We know about young people, you've had them spoken to as well, high school kids, university, kids at elementary school; the homemaker, the ordinary wage earner who is deprived of merit increases, advancement in the workplace and things of this sort; the small businessman, the individuals who will be deprived of pension benefits and other payroll benefits. Why is there such insensitivity towards these individuals?

For claims of loss of income in future, it should be 100%. And remember—again, you've heard this—the onus is still on the accident victim to prove such losses. Having been a trial lawyer for in excess of 35 years and representing injured parties only, I can assure you that all insurance companies rigorously defend in those areas. Let us have some faith in our judges and juries because, let me tell you, I can't even count on one hand how many times we've had 100 cents on a dollar for future loss. There are always substantial dollars taken off for contingencies.

PAIN still has difficulty understanding why there has to be both a verbal and a monetary threshold on general damages. If there has to be a threshold, surely the standard of "serious" will suffice. Bill 164 called for a \$10,000 deductible. I understand the proposed OMEGA was \$8,500. Now we have \$15,000. In our view, there should be no monetary limit, but if there has to be, surely the \$8,500 is too much.

The procedure advanced in the legislation whereby innocent accident victims can sue is onerous, overbearing,

unfair and unrealistic to the injured party. Most individuals are unaware of their rights and do not consult with lawyers, generally, until nine months after the accident. To require that individual to provide notice to the insurance company within 120 days of the accident is ridiculous. Pre-judgement interest should be from the date of the accident.

It is the opinion of most insurers that quick resolution of an accident claim benefits the insured party. This is nonsense. Once a proper prognosis can be provided by the treating doctors, only then can it be expedited. In those claims that will meet the threshold of seriousness, a proper prognosis cannot be provided for three or four years. The rehabilitation process also will become more and more delayed, as outlined earlier. The proliferation of paperwork under the proposed legislation can only increase the overall cost to the injured party.

To require mediation within one year of the issuance of the claim not only can be expensive but premature. Mediation should be compulsory, either when both parties agree or when a judge so directs.

We agree that the reduction of the benefits from \$1,000 to \$400 per week max is appropriate, providing the full right to sue for all economic aspects is there.

I respectfully, in conclusion, ask you to remember the words of Ralph Nader, "Regrettably, no-fault legislation does not save in insurance premiums."

Knowing this to be a fact, it should be the desire of all governments to maintain insurance costs at the lowest possible level. However, with the enactment of this legislation, premiums should fall and the profits of the insurance company escalate. In fact, a few insurance company lawyers have advised me that if you're smart, if this legislation is passed, buy insurance stocks. Don't hold a tag day for them. Thank you very much. We're open to questions.

Mr Kormos: Thank you, Mr Morris. This is the third time around for you—Bill 68, Bill 164 and now an as-of-yet-unnumbered bill. But look what these guys have done, please. They're no further ahead than any previous government ever was in addressing the issue. They made some commitments during the course of the election campaign: one of them a promise to restore tort; two, a promise to control and stabilize insurance premiums. They're fouling up miserably, none of the two are going to happen and they're using the most crass of legerdemain to try to make it happen.

The tort that's being talked about here is nothing more than an extension of the no-fault benefits for people who would go beyond the cap of \$400. The fact is that the difference between the cap of \$400 and \$1,000 in terms of premium cost is not substantial.

The other reality is that there is nothing about this scheme—and it's not even really a scheme; it's overly generous to call it a scheme—there's nothing about this bill that's going to either control premiums or improve the lot in life of victims in general, least of all innocent accident victims.

The Vice-Chair: Excuse me, Mr Kormos, a question please.

Mr Kormos: The fact is, they've failed miserably. It's going to be revealed clearly to the public. The public is

as cynical as they've ever been about any government's ability to regulate or control or offer any meaningful insurance reform. If any promise has ever been broken, it's been this one by the Tories, and the drivers and innocent victims of this province are certainly going to respond in a way that's going to be most remarkable to all of them and I'm looking forward to it.

Mr Sampson: I think I'll hold my discussion on whether or not people broke promises on auto insurance reform until perhaps tomorrow when somebody else is presenting to us.

You mentioned the OMEGA plan. Were you aware of any of the costings that were done by the industry on the OMEGA plan and how that trended and what its base cost was?

Mr Morris: I was not privy to that.

Mr Sampson: Would you be surprised to hear the base cost was basically our base cost in this plan and the trend was higher?

Mr Morris: No, nothing surprises me when it comes to insurance figures, because it's smoke and mirrors. I should tell you this, just one brief comment on this, to give you an example of this smoke and mirrors game from their perspective. We talk about these independent medicals, these IMEs or DAC assessments. You will find that these multitudes of examinations are all included in the medical and rehabilitation costs of the patient and are given in your figures, which is totally unfair, because most of them are superfluous and we can give you example upon example of how ridiculous that's—

Mr Sampson: I would agree with you that there needs to be more control of the industry and how they deal with medical claims. There's no question about that. It was in my opening statement. But I just wanted to make sure you're aware that their plan was providing price stability had a higher trend than this one.

Mr Morris: Remember reserves. Rumours are great, but my sources tell me there have been some wonderful profits made this year. Now, whether they're going to show up, they can be adjusted by reason of adjustment of reserves.

1440

Mr Kwinter: One of the constant phrases that appears in a lot of the presentations when they're trying to defend this idea of not compensating youths, not compensating spouses, is the idea of indemnification as opposed to entitlement and the feeling being, "Our obligation is to make them whole and then they take their chances just like they would have done if they weren't involved in an accident." What is your response to that?

Mr Morris: You can never make a person whole. You've got to do the best you can for that individual. Unfortunately, when a person's hurt—people don't invent pain. The courts are your best system to determine that and the courts will never give perfect compensation. I don't know whether anybody else can add to that one. It's an impossible question to answer the way you've phrased it.

Mr Kwinter: I'm actually in support of what you're saying, but I'm saying that we keep hearing this idea of indemnity as opposed to entitlement. I think what has to happen is there has to be a redefining of the fact that you

can indemnify people with an entitlement because of the fact that they're not going to be whole—

Mr Morris: You see, I'm not sure whether I'm answering your question or not, but it is the promise of this government, as I understand it, that there will be a 30% reduction in income tax. If we were assessing based on this plan today, that would not be taken into account with the 85%. There are so many variables when you go 85%. Believe me, when you use 100%, and then the judge or jury removes for contingencies, then you get a much fairer picture. But your 30% reduction in income tax, to me, is a perfect example in how the person can be penalized.

The Vice-Chair: On behalf of the committee, thank you very much for your presentation today.

Mr Morris: Thank you very much, and remember, you've got our full papers in here; we sort of abbreviated them.

UNDERWRITERS FRAUD CONTROL INC

The Vice-Chair: The next delegation before the committee is Underwriters Fraud Control Inc. Good afternoon. Welcome.

Mr Linden Rees: I'm Linden Rees, Underwriters Fraud Control.

Mr George Milnes: I'm George Milnes.

Mr Rees: We're an independent company of fraud examiners and fraud consultants to property and casualty insurers and industry organizations. The main part of our business is in Ontario, but we also work with American and Caribbean insurers and insurance associations. We find that reason dictates that we recognize that unless one stops writing business altogether, fraud can't be stopped per se. It can, however, be identified, reduced, deterred and otherwise prevented.

We applaud the anti-fraud teeth that the draft legislation provides to insurers, but our concern and our reason for appearing here today is that many insurers will remove those teeth and leave them in a glass by the side of the policy or the claim.

We note that according to the Insurance Bureau of Canada, about 60% of its member companies have signed a "declaration that they're taking certain measures to combat fraud." We applaud this initiative as well, but we can't help recalling that Neville Chamberlain as well had a signed piece of paper and war still broke out. It's our informed belief that the fraudsters in our society have already been at war with the insurance industry for many years and continue to be so.

It's our direct experience in some instances and observation in others that Ontario property and casualty insurers do not approach the fraud problem consistently and in more than a few cases they don't approach it at all. They seem to regard it as a cost of doing business, and unfortunately, that cost is reflected in premiums.

It's obvious to us that there is at least overtly an overall communal will within the industry. The Insurance Bureau of Canada has, through its coalition against insurance fraud, sought to raise public awareness of the fraud problem through initiatives such as its linkage with the Crime Stoppers program, the International Association of Special Investigation Units, the Ontario Trillium

chapter in this case, based in Ontario, and it's well organized. They actively address fraud problems of a more practical nature.

Unfortunately, it's our understanding that the IBC's coalition, for all its good work to date, is in serious danger of folding for want of continued funding. We suggest to this committee that all property and casualty insurers in this province, whether IBC members or not, should be mandated to support what is, de facto, the only cohesive industry-wide initiative that exists. The criminal element that helps drive up premiums is well organized. Should we, as an industry, be less prepared? We suggest not.

We find that many insurers still pay nothing more than lip-service, if that, to fraud reduction. One company president speaking to us put fraud control down to "nothing more than good adjusting," whereas his claims vice-president was considering putting one anti-fraud person in place for Ontario, one in Quebec and one for western Canada. Even if this plan had come to pass, and it didn't, it would have been, in logistical terms, impossible and actually worse than doing nothing, as insurers who do little often think they're doing enough, and based on a false premise of comfort, tend to sideline or downplay the problem.

One major insurer with a large, sophisticated special investigation unit department chooses to ignore the investigation of fraudulently derived accident benefit claims completely, preferring to concentrate instead on potentially fraudulent property claims. We heard from the IBC just the other day that 49% of the insurance costs are attributable to accident benefit claims. This appears to fly in the face of the direction of the draft legislation before us.

We note that the Canadian Bankers Association, anxious to reduce credit card fraud, assigned funds necessary to attack the problem, and when they felt it had been reduced to their satisfaction, pulled their investigative funding.

We respectfully suggest that property and casualty insurers can't take this approach. Insurers can no longer call 911 for immediate help. Police forces, due to various staffing problems, generally require a case brief investigation format before they can proceed. Even automobile accidents are reported to collision reporting centres, as the gentleman a few speakers ago alluded to. Insurers obtain their after-the-fact, over-the-counter, not-on-the-scenes police reports from them. When phoney claims are paid out, it is ultimately the honest segment of the insuring public which is asked to foot the bill.

In certain of the United States there's a growing regulatory courage to fight insurance fraud. In some states, an insurer can be refused a rate increase if, in the absence of a realistic fraud prevention program, they are subsequently defrauded. In other states, the insurer might be fined an amount equivalent to the fraud right off their bottom line.

These are not, we suggest, witch-hunt tactics, for they don't apply to those insurers who can show they've really tried to curtail the problem. New York state goes a step further by actively checking the effectiveness of insurers' special investigation units and anti-fraud programs. Our

own Ontario Insurance Commission has, to its credit, already trodden down this path. We've attached to our handout an exhibit in support of that position.

It's our submission that insurers must now be prevailed upon to set up comprehensive and meaningful anti-fraud measures, whether in-house or contracted to expert, external service providers with no potential conflict of interest. The object of such measures should, we submit, be to train brokers—because the fraud doesn't just get into the claims area; it gets in the day the policy is taken out—agents, underwriters and claims handlers to identify potential fraud throughout the entire insuring process and to resist and deter attempts to obtain an unwarranted underwriting or claims advantage.

We feel that deterrence, rather than persecution through an arrest mentality, should be the watchword. We further submit that such measures, when in place, be subject to independent or regulatory review, and that where these measures, within a reasonable parameter, result in fraud, whether it's internal—and frequently internal fraud is ignored by insurers—or external, consumer-driven fraud, that insurer be subject, as in the USA, to specific penalties.

In this manner, we feel that a large part of the Insurance Bureau of Canada's projected \$1.3 billion wasted on fraudulent claims—we happen to think that figure is low—can be applied to the stabilization of premiums, over and above that projected from the initial impact of this draft legislation.

1450

Mr Wettlaufer: Thank you, gentlemen, for your presentation. I found very interesting what you said, that insurers should be refused a rate increase if, in the absence of a realistic fraud prevention program, they are subsequently defrauded. That's a very interesting suggestion and one that I think we might take seriously.

You also made a comment that we should train brokers, agents, underwriters and claims handlers to identify potential fraud throughout the entire process. That also is very valid, because in 33 years of experience in the insurance industry—I just left that in June—I can assure you that there has been a severe reduction in any kind of training. The claims training is severely remiss. The training of underwriters certainly doesn't exist, to my mind, any more.

I thank you very much for your presentation. These are two excellent, excellent suggestions.

Mr Ford: Gentlemen, welcome. As has been pointed out, auto insurance is a complex issue that affects virtually every Ontarian, which is why legislation was brought forward, so we could get public input before the legislation is introduced. We've heard a lot about the level of premium rates. It is obvious that those rates are of concern to the consumer. Where do you see potential savings coming from, other than the fraud aspect?

Mr Rees: We think that the fraud aspect itself—not to sidestep your question—at least 16%, and in our opinion probably closer to 30%, is powerful enough that any insurer who can knock off even half of that 8% off the top straightaway has reduced the 8% projection that the insurance industry has come up with as a result of this legislation.

Mr Wettlaufer's comment was well taken about the training. A well-trained individual, whatever his or her discipline, one presumes performs their function in a little more professional manner. Cautious underwriting and cautious claims handling certainly does result, in our own extensive insurance industry experience, in reduced premiums at the end of the day.

Mr Ford: What are those figures again on the fraud?

Mr Rees: The initial study for the Insurance Bureau of Canada suggested that 16% of all claims paid bore some degree of fraud, whether the claim itself was wholly fraudulent or whether it was a genuine claim where somebody had sort of jumped on the bandwagon of opportunism and exaggerated or inflated their claim. We feel it's higher, and I conducted that study for the Insurance Bureau of Canada. We feel it's higher, because the study actually excluded all those claims that had already been reported to the Insurance Crime Prevention Bureau or identified internally as fraudulent.

Ms Castrilli: I'm interested in the New York example and I wonder if you might just elaborate on that a bit. You just alluded to it in your comments.

Mr Rees: Surely. The New York regulatory authorities for the insurance industry seem to take a much more hands-on approach than our own. For example, I can tell you they have a pre-inspection program already in place, and it's not window dressing, it really works. I know that our own Insurance Bureau of Canada is currently rolling out that plan.

They also go out and take a look at what insurance companies are physically doing to reduce fraud. It's not an academic exercise; I know that from firsthand experience. It's a hands-on look. Is it window dressing? Are they putting one person in to look at some 350 claims across the country or are they really doing something? They take a look at where the insurers get scammed and they take a look at what the insurers could have done if they'd have had the plan in place to offset that potential for fraud.

Ms Castrilli: Who is responsible for doing that? Is that their equivalent of the insurance commission?

Mr Rees: Yes, the equivalent to the insurance commission.

Ms Castrilli: You said that \$1.3 billion in fraud is conservative.

Mr Rees: Yes. That's based on the IBC's projection of 16%.

Ms Castrilli: What do you think it is?

Mr Rees: I'd say 30, 33, 34, 35, somewhere in that region.

Ms Castrilli: Billion dollars?

Mr Rees: Per cent.

Ms Castrilli: Oh, per cent, okay.

Mr Rees: There wouldn't be much of an industry left if it was.

The Association of British Insurers did a similar study and they came up with 57%, I think it was, of claims examined. Don't forget, these are claims that were paid and closed that bore some degree of fraud, whether they were inflated or wholly fraudulent. It sways a little bit, because some insurers, to their credit here, are very, very active in fraud-fighting. If one was to go in and take a

look at their book of closed claims, one would expect the percentage of fraud to be greatly reduced, whereas others who do nothing or purport to do something and do nothing, you'd expect it to be much higher. Our whole point here, I think, is the insurers who are actually doing something are supporting all the insurers who aren't doing anything. They're getting a free ride, they're piggybacking.

Ms Castrilli: Thank you. Point noted.

Ms Lankin: I'd be interested if you have any more specific information from other jurisdictions or references that you could provide the committee that we could have legislative research follow up on. I think that would be helpful to us. I think Mr Wettlaufer's interest, for example, in the area of the fines as an incentive and the kind of training specifically that could be provided to agents and underwriters would be useful to pursue.

If you're right that it's somewhere in the area of 33% and/or could be as high as the British study of 57% of closed claims, there's a huge amount of money that could be saved there which could be going back into the system. It strikes me that this is a problem almost irrespective of what type of insurance system or scheme or product you have and whether it's tort or whether it's no-fault. It may be that under Bill 164, because it was richer, it becomes more lucrative and it attracts that kind of activity, but the activity is there, it seems, no matter the system.

I'd like your estimation, if the companies were doing the job you think they should be doing in their own fraud reduction, what kind of money could be saved? If that \$1.3 billion even at a conservative estimate, let's say, is correct, how much of that \$1.3 billion do you think you could save and what would that mean for our system? Maybe we wouldn't have to cut benefits.

Mr Rees: I'm awfully glad you asked that question.

Mr Milnes: In terms of actual savings we prepared an example, but to answer your question directly, we would suggest that it would be, at minimum, two to one the cost of their investment—absolute minimum. We arrived at that by taking the figures as cited by IBC that 49% of the claims are accident benefit claims. Using a company with a \$100-million income and an average of 60% or \$60 million in claims paid, of this, 49% or \$29.4 million would be paid for accident benefits. Using IBC figures of 16% of that 49%, 4.7% is fraudulent. That amounts to \$4,704,000.

In addition to claims, a company faces marketing and underwriting and operational claims costs and allocated claims costs. Operational claims costs and allocated claims costs on average amount to about 10% each. Increasing—and this is very important—the operational claims cost by just 1% to an overall 11% of premium dollars would provide \$1 million for an effective SIU, special investigation unit. In turn, if the special investigation unit were effective to even 50% of what the IBC has identified—not what we have, but IBC—\$2.35 million would be saved, more than double the return on investment.

May I just finish here by saying—and I think it addresses a comment earlier—the industry over the last several years has shifted its focus somewhat from adjust-

ing claims to processing claims, hoping, I believe, that the computer will do a lot of the work for them. But face-to-face contact and basic adjusting skills that both myself and my partner have, covering off who, why, what, where, when and how, need to be asked in a lot of cases.

But even if you go that far and do a proper job of adjusting, the fraud examination work that Mr Rees and I carry out goes one step further than a special investigation unit would address. For example, the postal code of the insured, the broker and the place of employment. You don't dirty on your own doorstep sort of thing. Why would a person go outside their area to get insurance? That's something you wouldn't cover off in a normal investigation, but it is an indicator. That's all it is. The same as you would expect 25% of your losses to be within the first 60 days and last 30 days of a policy period, but we find on average, when we conduct closed-file studies, the fraudulent files are up in the 50% to 60% area occurring in those time frames. So there is a need.

The Vice-Chair: Thank you, Mr Rees and Mr Milnes, for your presentation today. Have a good day.

Ms Lankin: Mr Chair, could I place a question and ask that legislative research provide us with some comparative data on other jurisdictions and regulatory frameworks dealing with the insurance industry specifically with measures encouraging fraud investigations or fraud prevention.

The Vice-Chair: Any discussion?

Mr Sampson: Some of that is in the detailed presentation of the previous group and some of it has been presented to us as well through the consultation process. I can get that to the researcher. I think that's a good idea. 1500

CANADIAN BAR ASSOCIATION—ONTARIO

The Vice-Chair: The next delegation is the Canadian Bar Association, the Ontario branch. Welcome. Would you please introduce yourselves for Hansard and then begin when you're ready.

Mr Douglas Los: My name is Douglas Los. I'm the president of the Canadian Bar Association—Ontario. I practise law in Sudbury. With me today are Gina Brannan, the chair of the CBAO insurance law section, and Tom Andrews, the chair of the CBAO auto insurance committee.

Let me begin by thanking you for providing this opportunity for CBAO to comment on the latest proposals for revisions to the auto insurance laws in Ontario. I might add that this marks the 11th submission that CBAO has made on the issue of auto insurance since 1985. So it's been a well-studied issue to say the least.

Let me also open by noting that CBAO believes that the government has moved in the right direction with the changes proposed in this draft legislation. This move properly reflects increased rights for innocent accident victims, which is the most important part of this entire discussion. The government is clearly starting to address some of the more serious shortcomings that were evident in Bill 164. I would have to say, however, that while there is clearly an improvement over the previous law, in the view of CBAO there is some considerable distance to

go before Ontario has an appropriate auto insurance legislation scheme.

We have distributed a detailed brief outlining some of the larger problem areas which we see in the proposed legislation. Let me highlight them for you: (1) The government has not fully restored the right to sue for economic loss. The right to seek a remedy for wrongs sustained at the hands of others is a fundamental tenet of our democratic justice system. (2) The excessively high deductible of \$15,000. (3) The introduction or rather reintroduction of OHIP subrogation. (4) The failure to adopt appropriate controls and streamlining for the proposed accident benefits schedule.

I'm going to ask Tom Andrews and Gina Brannan to address these issues in greater detail.

Mr Tom Andrews: I've been working on this issue for about the past 18 months, and I've met with Rob Sampson and Bruce Crozier and a number of other people and the insurance industry and the brokers. We've been trying to work out a comprehensive plan that would give a good insurance product for Ontario, a product that's good for innocent accident victims but also something that's good for the driving public.

As we said, the government plan is a step in the right direction, but we have some ideas that, if they were implemented, we would get a good product that would be stable, that would be better than what I think the government has come up with for innocent accident victims. We're not just trying to look at what would be good for one side of the equation or the other. We've got to have a product that's good across the board, so let me tell you about a couple of areas where we think improvements can be made.

First, where we can save money: We believe insufficient controls have been put in place on the accident benefits side of the product. In our brief we have given you some of the ideas. We intend to give a much more detailed one within the next couple of weeks. The Insurance Bureau of Canada has come out with some very good ideas, many of which were included in the OMEGA proposal, which, especially in this particular area, we endorsed as an organization. With these sorts of controls put in place, we will get at the waste and the fraud, and by getting at that, there will be more money available for innocent accident victims.

Very briefly, some of the ideas:

We still see areas in the no-fault schedule where accident victims are getting paid where they don't have a pecuniary loss, in the case of non-earners and in the case of caregivers. They should be reimbursed for their expenses, but we see no need for giving them what is essentially a general damage award. That is for innocent accident victims on the tort side of the equation. That's our view.

There are also sections that don't adequately deal with people who collect unemployment insurance. We think some savings can be made there.

We're concerned about the definition of "catastrophic" injuries. The way it has been defined, we think it's too open-ended; people without truly catastrophic injuries might access these benefits, and we don't believe that is desirable.

Many of the things we'll come up with are subtle things that will save a dollar here and a few dollars there across the board, but when you put them together it does free up funds for innocent accident victims. Let's face it, that's who we're out to protect.

The second area where we're somewhat concerned is in the reintroduction of OHIP subrogation. We believe that amounts to a tax on accident victims, and an unfortunate one. The government has not been able to tell us so far what that's going to amount to, but we know that in 1989 it was \$93 million. With inflation, we would anticipate that it would be something in the order of \$125 million. And this is in the context that since 1989 there have been two additional taxes added to auto insurance premiums, a 5% sales tax and another 3% premium tax. It's our view that if this were reduced or eliminated, again there would be a further opportunity to make money available for accident victims.

The third thing I want to raise is what we can do for innocent accident victims. We are very concerned about the increase in the deductible from \$10,000 to \$15,000. I think most lawyers, if you spoke to them, would agree that the \$10,000 deductible has been a good thing; it has got rid of the nuisance claims. But as you go higher, it starts to have a discouraging effect.

When victims come to my office, as they frequently do, and ask me about their claims, I can never tell them, "Oh yes, yours is \$17,000 bang on." You can't do that. You usually give them a range, and the discouraging effect of the deductible reaches far beyond the \$15,000. It will affect claims as high as \$20,000 and \$25,000, because you can't know in advance where you're going to end. Who's going to go through the process if you don't know if it's going to be a successful endeavour? People at that range of \$20,000 and \$25,000 are people with permanent, lifelong injuries, people who have undergone operations, people with fractures that don't heal well. Those are the people we're talking about. I think they're very much deserving of an award for pain and suffering and I'm very much concerned that at \$15,000 these people are going to be eliminated from the system.

Another aspect of the deductible which we're not happy with is the way it applies before the assessment of fault occurs. To give a very quick example, somebody who had an injury that was assessed at \$30,000 and was 50% at fault would get \$15,000. You apply the deductible and he gets nothing. That is a very unfair result. It would be far better if the \$15,000 was taken off the \$30,000, so you'd start at 30, take off the 15 and get 15, cut it in half for his fault and you'd get the \$7,500. That's set out in some detail in our brief. I hope you follow it along so that people with the same injuries will be treated the same.

The major point we are concerned about is how the bill treats economic loss. It's set out in some detail in our brief, and I'd invite Gina Brannan to talk about that.

1510

Ms Gina Brannan: Thank you very much, Tom, and thank you, members of the committee, for an opportunity to address this very important issue.

With respect to the issue of economic claims, the legislation as it's presently drafted does not address all

economic loss. We've listened to other presentations and we've learned that through the process there may have been some errors in drafting with respect to that, and also that things such as loss of earning capacity and the cost of home modification for those who are quadriplegic, paraplegic, will likely be included. We encourage you to include those. If they're not, the devastation that will be found on those innocent accident victims who suffer catastrophic injuries will be far greater than they should be.

Probably the most important economic loss that has disappeared as a result of this legislation is that which relates to fatality claims. This legislation as it's presently drafted does not allow for the surviving dependants of a wage earner who is killed in an automobile accident to seek redress or to sue for the loss of that wage earner's wages at least until age 65. That's clearly unfair.

Let me give you an example of how the unfairness can play out. Take a single parent with two children and that single parent isn't even a member of the driving public. The person walks across the street on a green light and is run over by a driver who's at fault, and the individual is killed. What happens to those two children? The way the legislation is presently drafted, those two children will merely be looking at a \$10,000 each accident benefit and a claim for loss of what's called "care, companionship and guidance," which is not a huge claim. They will lose what they would have had, had that mother or father been alive, that is, the moneys earned by that person to put a house or an apartment over their heads, to put food on their table. Those children, in my opinion, will become a burden on the province. We can't afford that. We can't afford to let the person who's at fault not to stand up and take it in the ear, as we say, for something they did. It's just not fair.

People will say, what about life insurance? Life insurance is not the answer in this particular case. We're talking about auto insurance here. Premiums we're presently paying are not going to decrease because you take away pecuniary loss claims on fatality claims. They're going to stay the same. We're going to pay the same, and we're going to get a product that offers less. That clearly isn't fair. Then we'll be asked to go out and buy another insurance premium to cover something that should be covered by our auto insurance. That's not fair and, in our respectful submission, should be addressed.

The other area with respect to economic loss is the 85% of net income. Let me make it clear. If you are killed in an automobile accident and you're a wage earner, your surviving dependants basically get the accident benefits, which are minimal, so really they're getting nothing. But if you are rendered a quadriplegic, if you're rendered a paraplegic, if you are rendered brain dead or in a vegetative state and can't work, the surviving dependants get 85% of net income. To me there's something inconsistent here, that if you are dead and can't work your surviving dependants get nothing, but if you're lying in a hospital bed on a life-support system, your dependants can sue for 85% of net income. That unfairness has to be addressed.

Figuring out loss-of-income claims is very difficult, as it stands. If we introduce net income, it's going to become even more difficult. The difficulty is going to

arise when we deal with the future loss of income and how we address positive and negative contingencies when figuring out the future loss; that is, things such as death before age 65, things such as, would the person have been promoted during the period for which they would have worked? Those are going to be very difficult to address. Income tax deductions—I mean, who can understand the Income Tax Act? But we're now going to have to use a crystal ball in determining net income into the future and try and figure out what the income tax deductions are going to be into the future.

All that's going to do, in my respectful submission, is continue to add to the costs of presenting claims. We're going to have to hire expensive accounting and actuarial experts to deal with these issues. It's not going to be a question, as we had in the old tort system, where they figured out what the future loss of income was based on gross income. No, they're going to have to figure out net income with all these new contingencies, not the least which are income tax deductions in the future. That's going to cost a lot of money. That will be borne by the individual who's bringing the suit; it will come out of the settlement. It doesn't make any sense.

More important, even beyond that, when you look at 85% of net income, you have to ask yourself the question: Why is it that if a wage earner is injured in an accident and cannot work, that family must live on only 85% of net income? Had the person been able to work, they would have had 100% of net income. It seems to me that we have to look at what's fair in delivering this particular insurance product, and to take fairness out of the system doesn't seem to me to be the route that—well, we as lawyers don't want to see that happen, and surely people who are legislators and have their constituents at heart don't want to see that kind of unfairness for their constituents.

We understand that the government has made some commitments to deal with this particular area. We, the CBAO, are prepared to offer constructive assistance in the best way we know how. We're there when you need us and for how long you need us to offer that constructive assistance. We're prepared to take questions.

Mr Andrews: Just one more point. We would like to see the solution in the legislation, not in the regulation. Now we're open for questions.

The Vice-Chair: Thank you. That leaves us with one minute each for questions. I remind the members that the shorter the questions are, the better answers we can receive from our delegates.

Ms Castrilli: I'm not sure you'll be able to answer in one minute, but I'm going to ask my question anyway. I really would like some information on this on the record. We've had insurance companies come before us and state that part of the problem, a large part of the problem, is legal fees, and that's why insurance payments have to go up. Medical rehabilitation costs and legal fees are cited as the two large issues. Specifically, as you may be aware, the insurance bureau is now saying that there will be increases in insurance premiums of somewhere in the nature of 7% or 8% a year for the next four or five years. It is the position of at least one insurer that when you factor in contingency fees, which will soon be here, we're

looking at adding anywhere from 2% to 7% to those costs; in other words, the costs will be in the double-digit range. I wonder if we could get your comments on that.

Ms Brannan: I'll make one point, and then I'll hand it over to Tom.

Ms Castrilli: I'd be happy to receive something fuller from you, because this is an issue you may not be able to handle in the brief time.

Ms Brannan: We've been in the no-fault system, or no-fault/tort system, for almost coming up to six years in June, and the lawyers, for the better part, with the exception of the first-party claims before the Ontario Insurance Commission, have basically been out of it. We don't have the number of tort claims around that were here prior to no-fault. They just aren't there. Notwithstanding the fact that the lawyers' involvement has decreased, insurance rates only continue to increase. I have to respectfully submit that it's not the lawyers that are the problem.

1520

Mr Andrews: One thing to add is that I don't think contingency fees are a factor. Most people who come into my office who have a serious problem can't pay as they go anyway. The lawyer waits to the end of the day to get paid, just as it will be when contingencies come along. The only difference will be whether you get paid on the basis of your services or whether you get paid on the basis of a fixed percentage. I don't think contingency fees will make much difference. They're already being funded by the legal profession, because the poor accident victim can't pay as he goes. He's out of a job.

Mr Los: One minor point: On the contingency fee basis, the fee will come out of the result, not an add-on to the result.

Mr Kormos: With respect to contingency, please let's be candid here. As I told my friend across the way a little while ago, I never practised personal injury litigation. I come from a small town and maybe we do things differently down there, but for all intents and purposes, contingency fees have been the rule, although not called that, in personal injury litigation for a long time. The legal costs were paid and, if I remember correctly, the figure was something like 15%, and personal injury lawyers I have happened to rub shoulders with take another 15 points out of the settlement and that's what it ended up being.

But aside from that, I am concerned that the bar is being co-opted, is buying into—your submission today is nowhere near as enthusiastic as it was the first time round, Bill 68, on behalf of the principles of tort. It was spoken of earlier as principles that go back to Old Testament times, Leviticus, among other books of the Old Testament. The bar seems to be buying into no-fault, at least by way of compromise, as long as there's a little bit of tort there, and merging the two principles of whether you're insuring yourself—

The Vice-Chair: Mr Kormos, a question, please.

Mr Kormos: —or whether you're obtaining coverage to give effect to third-party coverage to protect yourself when you had hurt somebody and somebody makes a claim against you. Is there some sort of compromising going on here on the part of the bar, the world's second-oldest profession?

Mr Andrews: We get accused of some awful things.

We have to be realistic. Our ideas are to have a balanced program, one that will give some stability to the driving public, and that's a program that has some tort, a program that has some no-fault. We would like to see a bit of redress of what the government's come forward with, which would put some more tort in, more for innocent accident victims and maybe a bit less on the no-fault basis, because we think that's where most of the waste and fraud is. I think you're right. We've lived through this a lot and we see a change in perspective over the years.

Mrs Marland: We've been hearing from all the stakeholders for three days now, and for those of us sitting over here, it's probably, for the most part, for the first time in depth. Our parliamentary assistant has been doing it for eight months, as you know, and he's far more knowledgeable than we are. I'm really hearing that an awful lot of people are in this pie, an awful lot of people with their fingers in the pie. Everybody I listen to could convince me they're needed.

I think I'm going to start asking all the stakeholders what advice they have, because the problem is, from my constituents, that they have to pay too much money for their automobile insurance. That's the bottom line. We as the government are simply trying to play a role of bringing all the parties together to resolve that problem.

If it isn't the lawyers' fees, is it the treatment centres? Oh, no, it's not the treatment centres. And then you get down to the poor victims, who aren't even believed that they're suffering. And everybody is in this justifying the need for what is very often a very sad end result for the victim.

Mr Los: You raise a very valid point. Let's call a spade a spade. The innocent victims of car accidents have been victimized by our automobile insurance legislative scheme for the past six years, and they need to be paramount. Our presentation here today talked about remedies and rights for victims. We did not raise the issue of fees; it was in response to a question. I agree with you: That is the primary concern and we have to all keep that in focus.

Mr Andrews: We've been working for the past 18 months to try to put together a compromise plan, and we've met extensively with insurers and brokers and whatever. I'm sure you've heard the name OMEGA. We were part of the consultations that led to that. That wasn't our first choice. We went to all the stakeholders in the system and tried to get something that would be stable, fair for accident victims and good for members of the driving public. That's our focus. We're trying to take a broader view.

The Vice-Chair: Mr Los, Mr Andrews, Ms Brannan, thank you for your presentation. Have a good day.

ASSOCIATION OF CANADIAN INSURERS

The Vice-Chair: The next delegation before the committee is the Association of Canadian Insurers. Good afternoon, and welcome to the committee.

Mr Bob Purcell: Thank you, Mr Chairman, ladies and gentlemen. We've handed out a brief. With the time frames we won't be able to cover it completely, but we

will try to highlight it for you. On the front page you will see the full titles of the individuals here today. I am Bob Purcell, and I will speak for the Association of Canadian Insurers. With me are Dieter Mayer, Don Wright and Sue White.

Moving right into the introduction, we would like to set a context for our comments today and we are also hoping to bring with us some solutions, some real suggestions that will work and make this product the kind of product it should be.

To set the context, we are a group of insuring companies that are Canadian-owned. We've looked at the package carefully. We've had our working committees look at it, and we think it is a good building block, a good foundation for auto reform in Ontario. We think it makes an excellent platform, but we're going to offer some very specific solutions and we want to comment on the thrust of those solutions.

We look at five headings that need to be addressed.

(1) The reform package has to end up being fair. It has to be something that people can recognize as fair for everyone involved. But you also have to realize when you do that that it cannot be all things to all people and still remain affordable. I think that theme comes over again and again and again. I don't envy the group here, the committee, or the government, because you're going to be left when this is all over with a fundamental question. You're going to have to answer the question, what basic coverage does the consumer actually need and how much are they willing to pay for that? That's where you're going to end up. We think some of the solutions we're going to offer will help you in that respect.

(2) No one can deny that the rapidly escalating costs of Ontario auto insurance, particularly under Bill 164, have to be stopped. It's far too expensive and no one can continue to fund this escalation.

(3) You require a stable product. I honestly believe we only have this one more chance at it. We collectively, everyone involved, have been beating this up too much. We'd better get it right this time. As we look at getting it right, we hope that some of the solutions we bring make some sense. We will point out, on stable product, that we feel the most destabilizing portion of the product being presented is the economic and non-economic loss tort, the return to that.

(4) The government wanted a broad consensus. I think they've tried hard to get a broad consensus. We congratulate the government for bringing forward a base product that probably has as much consensus as you could ever have from all the stakeholders. However, there needs to be some adjusting to that. But there are two fundamental ingredients we have to keep harping on, that when you're done with this, you have to make sure it's a fair system and an affordable system.

All the presenters here, with the exception of a few individual injured people, are people who rely on the system for their very existence, including myself. I work for an insurance company. There are three players involved in this whole process: There are those who have to fund the system, there are those who have to access the system because they're injured, and there are all the rest of us before this committee who live off the system.

Don't forget those other two very important ingredients, those who fund it and those who have to access it, when you're doing this.

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(5) The other prerequisite was that there should be no offloading of costs on to the public system. We agree with that wholeheartedly and we would emphasize that we all have to realize that the dollars involved in funding the auto system or the public health system originate in the same pocket. Don't forget that.

Now we move on to page 3.

We make a general offer of assistance, and this is a sincere offer of assistance, as it moves into clause-by-clause review. We have, with our member companies, varying degrees of expertise. We have people who are hands-on, and we make a general offer of assistance.

Some red flag areas: first, the tort area. As to economic loss, we believe a return to tort is probably the best way to deal with many of the issues surrounding people injured in a automobile accident and we believe that people who are innocent victims should have this type of remedy. We think you need to make absolutely sure, under the economic loss side of it, that it is pure excess, that any available accident benefits or no-fault benefits are fully accessed. By doing that, you end up with a filtering system. If they filter through the first-party program, you're viewed as having a legitimate claim for excess loss. Most of the lawyers who come before you will admit that if there's a legitimate claim, it very rarely ends up in court; we find a way to have a mutually acceptable solution. So you need to be careful that this filtering occurs.

Non-economic loss for pain and suffering: We feel that the word "permanent" should be inserted into that verbal threshold. You have to bring in some element that shows it is prolonged and ongoing so that you do separate the wheat from the chaff and you end up allowing this money and these funds to go where they are absolutely necessary.

Accident benefits: We don't think there should be any entitlement benefits in a product. It should be based on remuneration for loss. There should be no benefits in the product that are just benefits we'd like to give to people as a gift because we feel sorry for them. I would like to do that, but nobody can afford to do that.

Under the same heading, there should be no "Pay now, dispute later" provisions. They're unnecessary; they don't occur in any other insurance product. It's in the insurer's best interests, who is the gatekeeper of these products, to get out there and do the job right initially. Our company, the one I represent, is the largest personal lines insurer in Canada. We have the most individual homes insured. We have no "Pay now, dispute later" for house fires, but you will find us on the scene, often before the fire trucks leave; you will find us there helping people mitigate their loss, helping people board up their homes and getting them into hotels. These are the same people and the same employees who have to deal with these products. It's in our own self-interest to get out there and do the job right, so you don't need "Pay now, dispute later".

Definition suggestions: This are where we're getting into some very specific suggestions. This is a house-

keeping one, but "spouse"—you should also repeat it in the regulations. Most people, when they're dealing with it hands-on, deal with the regulations and don't have the act out all the time. It makes more sense.

The definition of "accident"—and what these solutions do will allow us to be good gatekeepers. We heard the presentation earlier about fraud. The insurance companies aren't doing a good job, but one of the reasons they're not is that they do not have the tools, they do not have the ability to be the effective gatekeepers the way the legislation is currently written. We need that opportunity. This is the way you do it. When you have an accident, you define it and you move in the words "in which loss causation is directly related." If you don't put that in, the way the wording is now you can't relate it directly to an auto accident and you can't relate it to the cause of the injury. You need to do those type of things.

As for as the definition of "catastrophic impairment," I think most of the groups that have come in here are very unhappy with (f), the catch-all at the end of "catastrophic." We give you a specific solution for that. We say delete (f) as it exists now and insert a new (f): "third degree burns affecting at least 60% of the injured person's body"—unfortunately, burns are a big part of serious injuries in automobile accidents—and a new (g), which is a catch-all but says, "Any physical impairment or combination of physical impairments creating a need for ongoing professional attendant care...to the needs of (a)."

If you go back, (a) is a very serious injury. If someone needs that level of care from a professional, then they should be considered catastrophic. So that's a good solution.

If you look at number (4), a definition of "insured person," you need to tie the existing priority of payment rules. The last three governments worked on that. They finally I think have it in place and it seems to be working extremely well, so let's not throw it away.

If you look the definition of "health practitioner," occupational therapists should be added with respect to formulating a treatment plan only. That may not be possible because of the legislative definition of a health practitioner. If you can't do it in that area, then you should show that they have a responsibility in the area of helping to put together a treatment plan, because it's based on remuneration; it's based on not going back to work; it's based on not having that type of access again.

Exclusions. We need to put suicide or attempted suicide in the exclusions to avoid the confusion. Also, anyone knowingly operating or using an uninsured vehicle should not have access to the system, period. They made that choice when they stole the car.

When you talk about penalties, we think the fines have to go up. We also recommend that uninsured vehicles be seized and impounded immediately by the police. They may be released later. We do that with unsafe vehicles. Why don't we do that with vehicles that are operated by unsafe drivers? Unsafe drivers are more dangerous than unsafe vehicles, so there should be something there.

Specific suggestions. I don't have much time, so I'll cover what we did: economic loss, non-economic loss, accident benefits, the levels—there should be no pay-

now. Benefits at age 65, we're willing to work with you. There should be some wrap-down or there should be some change at age 65 that takes into account that you're leaving the workforce.

Non-earners. That's a red flag area; that's where you have the \$185 that is basically a luxury we can't afford. The insured person, accident benefit coverage, caregivers—you should insert it should be the primary caregiver. It's a simple little word but very important when you come to deciding whether or not there is a true loss involved.

Medical and rehabilitation. We need the tools to be the gatekeepers. But as we say that, when you talk about the treatment plans, the legislation requires you to have a treatment plan. Let's have some flexibility there. Most of our insureds, believe it or not, we get along with extremely well, we cooperate with very well. If we mutually agree that we can have a verbal plan or we can waive a plan, that the people are going to go back to work in a couple or three weeks, then let's do that. But let's have the ability that if we have an impasse, where one side or the other is not cooperating, then it becomes mandatory and you can make that happen fairly quickly.

There's too much adversarial context to this. We have to realize we deal with a lot of very good customers we want to keep as very good customers. So it's important that we do that.

Designated assessment centres. Again, there should be freedom of choice there. It's fine to have them, and we think they're working fundamentally not too badly, but instead of having to go to a certain geographic one, have that ability if there's an impasse, if either side won't cooperate with the other, then boom, that's where you have to go. But for the most part, have a nice list of DACs, have a list of qualified physicians, specialists, people who are available who have been scrutinized and properly put on the list, and if we both agree and it makes sense, then let's just go straight to them. Have some choice there.

Income replacement benefits. There's no bottom end to it and there should be. We have people who have very limited income, kids who work in McDonald's or something just on the weekend and don't make very much; they don't make the \$185 a week. The only thing that happens out of the accident is that they may not be able to continue at McDonald's for a few weeks till they recover, so you should be able to give them 85% and you shouldn't be forced into \$185, give them a raise for not going to work when they were only making \$50 a week going to work.

Conflicts of interest are extremely important. This is something that has to be dealt with in a clear and decisive fashion. We think that's important.

Pre-approval of services. Gatekeepers require that. If you're going to have us perform the role properly and you're going to have us do our function right, we have to be able to pre-approve.

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By the same token, there should be penalties for insurers who do not perform and do not do their job right. Hold us accountable. We're willing to do that.

We're willing to do our job properly if you give us the tools to do that.

Accident benefits or attendant care. Decisions of the DAC should be binding on both sides. Right now, they're binding on one side. What kind of a decision is that?

Accident benefits for death and funeral; we mentioned suicide.

Optional benefits. This is an area where we want some consultation. When you implement this, there will be a phase-in period. If you've got all these optional benefits, some of them should be read into existing policies right away for certain periods of time. That has to be talked about.

Notification of the public. You've got to make sure they know that they have options they're required to buy, so let's make sure we do that nice and smooth and seamless for the insuring public.

Student benefits. This may be the one area where the \$185 works, because the student is not getting it for nothing. Students are planning on eventually finishing their education and entering the workforce. So there could be a phase-in to that two-year period, but at the two-year they now have a test for activity of daily living. That test should be the same test you apply for someone who is going to be employed, and it would make more sense.

Visitor expenses. We made some comments there, and housekeeping.

Case management is a big red flag. You need accountability. One of the quickest ways to make accountability work there is to move that within the limits that are available for accident benefits. Then they have to be extremely careful how they use case management, because it's a very important part of the whole rehabilitation process. They have to be very careful because then it's part of the victim's money. That brings accountability in itself to it. What makes case managers any more valuable than the attending physician or the surgeon or whoever else we're paying for the rehabilitation? They all should be under that same umbrella.

Cost of examinations should require pre-approval. Loss transfers were commented on. Exclusions were commented on. Dispute resolution, we applaud trying to streamline that and we'll work hard with you on that. Rate approval we applaud.

Anti-fraud measures. One thing needs to be added. The two anti-fraud measures that are there are great, but you need to also add examination under oath. That's considerably different than a sworn statement. Examination under oath really gets at the crux of the abusers. That's an important tool to have in place.

Health care recovery. We haven't talked about what the percentage will be, but again, as we talk about that, think about the ability to pay by the consumer. It's always got to be paramount in our minds, whether you collect the money through the insurance industry or through an OHIP premium or a tax, it's all coming out of that same pocket.

We ended up by quoting Mr Henry Ford, who says, "If we are all moving ahead together, success will take care of itself." I think we need less adversarial relations and

we need a lot more people focusing on that same person who funds this system and that same person who needs that system.

With that quick overview, we're open for questions.

The Chair: It'll be a challenge, questions. Can we start with a very brief question from the third party.

Ms Lankin: I have six questions.

The Chair: I made no editorial comment whatsoever.

Ms Lankin: I noticed. There are a lot of things I'd like to ask you. Perhaps I'll have a chance afterwards out in the hall. Let me just ask you, if all of your recommendations were worked on and incorporated in some way or another, what do you think would happen to rate stability versus Mr Miller's estimate of 7% to 8%? And one other quick one: Why does Dominion not agree with this presentation? What aspects do they disagree with?

Mr Purcell: What would happen with rate stability is I think you could have a much better chance of proper, real stabilization. We did not have time, as the Association of Canadian Insurers, to do our own pricing on this. Individual companies are, our company individually will be, presenting in London and we hope to have some of those specific answers for you. But it is obvious with the solutions we're proposing that it is a less expensive product and it gives us that ability to get at the soft cost, which is how you handle it, the process, the gatekeeping ability. That in itself should give us the opportunity to do a lot more with a lot less.

Ms Lankin: And Dominion?

Mr Purcell: Dominion, where they differ—and Mr Cooke has to wear several hats, as chair of the IBC committee and their recommendations, and then Dominion, and Mr Cooke worked extremely hard on trying to get a level of everyone buying into the system. I think he's done a marvellous job coming that far, but when you get to this stage, IBC, Mr Cooke and all those people have delivered a very good foundation, but we only have this one chance to do it right. So we, in good conscience, have to point out the areas that we think need adjustment.

Mr Wettlaufer: Yesterday we heard that 4% of the proposed IBC increase of 7% could be attributed to sheet metal costs. Have you done any costing on the individual segments in the AB, the bodily injury, to see where they can be pared?

Mr Purcell: No, as the Association of Canadian Insurers we have not done any costing on this yet. Individual member companies are working frantically on that now. The actual product only came out on Friday, and we just had access Monday to the package of pricing that was provided, so our actuaries are burning some midnight oil.

Mr Kwinter: In your brief you say, "We would emphasize that this should not be a political solution but rather a pure insurance product that serves the consumer." This is a political venue, and I'm telling you that we are talking about a political solution. If we weren't, why would you be any different than any other sector in the free economy? You'd go out, you'd set your rates, you'd compete with each other and sell your insurance. It is a political issue.

To give you an example, my colleague today asked one of the presenters, "What do you think the right price

should be?" He said, "I think about \$700." His number that he had was about \$1,100 or \$1,200. He may have the best bargain in the world at \$1,200 but it doesn't really matter because he doesn't understand how the rate was set, he doesn't understand how insurance works; he just says: "That doesn't sound like a good number. A number that sounds better to me is \$700." What the challenge of the government is going to be is, how are we going to come up with a number that is politically saleable? Everything else stems from that. Do you have any comments on that?

Mr Purcell: I'll take you back to the fundamental question I raised. When we leave you and everyone else leaves you, you're going to be faced with the question, what basic coverage does the consumer actually need and how much are they willing to pay for that? You're going to be left with that. If we were designing a product as a company, those are the kinds of issues we have to address and come up with.

All we're asking you to do is to approach it that way, to forget about this big group of people coming in, including myself in the middle, that lives off the system, and think about those who have to pay for the system and those who absolutely need the system. You do need us in between, but when you're looking at it, if you go back to that product mentality, you will come up with a better solution. We've tried to help with that.

The Chair: Mr Purcell and the Association of Canadian Insurers, thank you very much for your presentation today. We certainly appreciate it.

HEAD INJURY ASSOCIATION OF TORONTO

The Chair: We now welcome the Head Injury Association of Toronto, Mrs Crawford. Welcome. We have your presentation being distributed. Please proceed.

Ms Ruth Crawford: Actually, my presentation is almost verbatim. The main mandate of the Head Injury Association of Toronto is to provide information and support to survivors of brain injury and their families. We currently have a membership of over 600 in the Toronto area.

Brain injury is different from any other physical injury. Your brain is in a very real sense the basis of who you are. It is your brain that determines how you get along with others, what you like or dislike, your work habits, your talents and abilities, your physical capabilities, your personality, everything that makes you you. Everything you are is very vulnerable to a brain injury.

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The concerns expressed in this brief are directly from our membership, from those who are actually living with the effects of brain injury. Our concerns are primarily in the following areas: first of all, the definition or classification of brain injury; second, timeliness of making a claim; third, ensuring objective and unbiased diagnosis and assessment; fourth, medical and attendant care benefits; and lastly, access to the tort system.

First of all, under definition or classification of brain injury: We disagree very strongly with the use of the Glasgow coma scale as a classification of levels of brain injury. This scale was never intended to be a measure of impairment and/or disability. The higher level of funding

for medical and rehabilitation benefits must be available according to need. It is imperative that classification be based on a view of the whole person and how they're actually functioning in their home, in the community and in the workplace. Functional assessment is key.

We're especially concerned for those with what would be termed mild to moderate injury, where the disabilities are often invisible. Many of these victims face monumental changes, including cognitive impairments, psychological reactions, physical difficulties, family and social upheavals. All too often, these people are denied the treatment and support they require and their cases are closed too quickly.

There have been some suggestions of more appropriate methods of determining impairment. These include the Glasgow outcome scale, the World Health Organization's definition of impairment, disability and handicap, and a scale drafted by the Ontario Association of Speech-Language Pathologists and Audiologists. While none of these methods are perfect, they're certainly a huge improvement over the Glasgow coma scale. In addition, brain-imaging techniques are constantly improving.

Our second point, under timeliness or time lines: We strongly feel that the time lines for notification of a claim are very unreasonable. In the case of brain injury, the original period of two years was more practical.

Unfortunately, due to the nature of brain injury, the need for rehabilitation or the need to commence an action to recover losses may not be apparent for some time after the injury. In most cases, the victim and their family, and sometimes even their doctor, tend to concentrate their concern on the more obvious physical injuries and are unaware of or lack the understanding of the seriousness of the brain injury. It's often not until some time has passed that the effects and full implication of the brain injury are faced, or even an appropriate diagnosis is made.

Third, ensuring the objective diagnosis and assessment: We're very pleased to see that designated assessment centres will be relied upon to provide objective, unbiased diagnoses and assessments. However, because of the great responsibility these centres carry, there must be assurance that those involved have the appropriate knowledge, skill and experience with brain injury. It is imperative that a quality assurance framework be in place to ensure the effectiveness and efficiency of the DAC system.

Under medical and attendant care benefits: Under medical benefits, we're very concerned that the limit of \$75,000 for treatment is too low for most brain injury cases, especially if there are additional physical injuries. As mentioned earlier, all too often the physical injuries receive the primary attention while the longer-lasting cognitive effects of the brain injury are ignored and not treated.

Under attendant care benefits: In some cases a brain-injured person requires 24-hour care or different levels of attendant care at different times throughout their recovery. The monthly limit for this care is sometimes simply not sufficient to provide the amount of skilled care that may be required for some individuals. The allotment of these funds needs to be flexible to meet the individual needs.

Lastly, the access to the tort system: It appears to us in reading the draft legislation that dependent spouses, children, the temporarily unemployed and students will not have the right to sue for economic losses. Now, clearly this is unfair. It especially hurts the group that is at highest risk of suffering a brain injury, those between the ages of 18 and 28, who are often still in school or not yet settled in the workforce.

We know there are probably a lot of other issues in this legislation that have impact on brain injury victims. However, we don't feel necessarily qualified to speak on all of those. But we do thank you very much for the opportunity to express our concerns.

We understand that brain injury cases present unique challenges, but we ask that this uniqueness be recognized and dealt with appropriately. We know only too well how devastating an injury to the brain can be, not only to the victim but to their family and loved ones and to society as a whole. We sincerely hope you'll take our concerns into consideration and revise this legislation to ensure that brain-injured victims receive the help and support they need to lead as fulfilling and rewarding a life as possible.

Mrs Marland: Ms Crawford, thank you very much for your excellent presentation. I guess it's like everything else. The more times we hear several of the same points being made, the better we understand it and the better we learn about the ramifications. I think it confirms for all of us the reason that our government introduced this as draft legislation. I see now the real importance of why it is in a draft form.

We did have a group this morning on head injuries, and I'm sure you know the name of that group.

Ms Crawford: It was the Ontario Brain Injury Association?

Mrs Marland: Yes, that's right. They were out of time, and I followed them out into the hall, because I'm quite willing to admit that I hadn't even heard of the Glasgow coma scale before this week.

Ms Crawford: A lot of people haven't.

Mrs Marland: That's the wonderful thing about life, isn't it? We learn something every day. They were talking this morning about the Glasgow—oh, dear.

Ms Crawford: Outcome scale.

Mrs Marland: Outcome scale. Thank you. The question I asked them was, what experience is there around the world with either of those scales, and is there somewhere in the world where someone is doing it better than we can be compared to in our province?

I guess the difficulty is the fact that in our draft we've established this step between \$75,000 and \$150,000, and that puts a greater onus on us to have that diagnosis be accurate. I suppose, when we look at whether it's \$75,000 or \$150,000 and we listen to some of the deputations that have been in here, I'm wondering if there are enough data available that we would ever be sure what the figure should be. I'd like you to comment on that, because I'm wondering from your involvement whether there are in fact a few people with less severe brain injury for whom \$75,000 might be all right, but then there might be others who might need \$250,000, and how could we meet that challenge?

Your very last sentence, where you say you want "to ensure that brain-injured victims receive the help and support they need to lead as fulfilling and rewarding a life as possible," I can assure you that's what this government wants, and I think, with quite humility, the two opposition parties. That's what we would all want, no matter who the government is.

Ms Crawford: I think we recognize too, and I think that's why I tried to make that statement, that we understand that brain injury is unique. It is a tough, tough thing to handle. As most people in the brain injury field will say, a lot of the research and the technology has all come within the last 10 years. It is a very new field, and they're learning more every day.

As I said, there is no perfect way. Because brain injury is so complex, there's no sort of specific way you can slot anyone and say, "Okay, this one will be this and this one will be that." Some of the results of a brain injury can be very subtle.

I think what's important is to somehow build in some flexibility there, but also to make sure that the people making the decisions have the appropriate knowledge and expertise. Unfortunately, we hear horror stories every day of people whose cases have been wrongly closed quickly or misdiagnosed because they weren't going to the people who had the real brain injury expertise. I think that's a key one.

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Ms Marland: So how do we get around that problem?

Ms Crawford: I'm not a medical person and we don't profess to be, so this is not sort of an official thing, but I know the experience with brain injury is really growing in Ontario. We've got some real good centres of excellence. That's why I think the designated assessment centre—we're really pleased to see that in there, but somehow making sure that those DACs are really able to do what we need them to do, making sure that the appropriate experience—maybe it means having one that's specifically for brain injury. But somehow make sure that the people making the decisions know as much as there is to know about brain injury to make the right decisions.

Mr Crozier: Thank you, Ms Crawford. You've spoken to timeliness, and when you did you said that, "Unfortunately, due to the nature of brain injury, the need for rehabilitation or the need to commence action to recover losses may not be apparent for some time after the injury."

The previous presenter said there should be no pay now, dispute later provisions. So having said those two things, can you tell me, are there those cases, and how concerned are you about them, where there needs to be immediate action and it may in fact be a provide now, pay later situation?

Ms Crawford: Again, this is one of those tough things. When a brain injury happens to somebody, families are very unprepared. I know when a brain injury happened to my older sister—that's why I'm involved—we were completely unprepared. When somebody breaks a leg or loses a limb, there's something visible, there's something tangible to see and to talk about and the

treatment plan is much more clear. But the brain injury is very difficult. It's a whole new world.

This creates a lot of difficulty for a family to be aware, very quickly after the injury, just how serious it is, whereas the treating physicians or the treatment team might have a much better idea. It's still very difficult to know in those first early stages really how long that will go. Now, medical professionals might be able to give you a better idea of that than I would, but it is a struggle. There's a certain amount that the treating team will know much better than the family, in which case the family needs to take that advice and information, and the insurance company needs to respect that information, but also realizing the family may not have let that sink in enough to know to make the claim that they need to make. They might not realize that for a couple of months or possibly even a year. They keep thinking it'll all go away. The person looks fine; therefore, they'll be fine. And that's just not the case.

Ms Lankin: Thank you very much. That really speaks to your point on time lines, as well as the whole experience in the last few years with the growing knowledge of brain injury and the problems attendant to that. It's still a new field, even with the experience that we've built, and it is kind of a medical problem that perhaps won't manifest itself till some time down the road. So it's a very important issue that you raise.

I want to ask you about the medical benefits and the limit of \$75,000. We heard a recommendation from the Association of Canadian Insurers that in fact under that limit, case management should be included. Currently, under the proposed legislation, that's excluded.

I think this is a real issue for us to grapple with. I'm concerned that \$75,000 in itself is too low and too arbitrary for some cases where there are, particularly, combined head injuries and physical injuries and yet where the person may not make the assessment for catastrophic impairment.

Case management is a critically important part of helping people. I had an individual situation when I was in the Health portfolio, where I learned much about the need for more treatment facilities here in Canada, and we started to put that in place. It was an individual where the husband was in the States. We were paying for that residential care, and the wife, who was a social worker, was able to put together a case management plan here, with local services. It was an incredible effort on her part to do it, and it cost the state less to pay for that, and the individual was back home with the family. It was a wonderful solution. Translate that over in terms of how important case management can be if done effectively, and particularly in these cases.

Could you comment again on the \$75,000, and particularly on the recommendation we just heard to include case management under that accident benefit cap?

Ms Crawford: I think you've raised an excellent point about the need for that. As I said, very often with the injured individual, their family is left with that full responsibility of coordinating this care, which is completely overwhelming. Unfortunately for some people, especially if the brain injury is in combination with other

injuries, you're right, the case management is a very key role.

That's where we really stress the need for flexibility on an individual case basis. I know that's difficult, I know that raises a lot of challenge, but it's the only way people are going to get the help that they really need.

As you said, we can save a lot of money in that way. We've seen so many situations where families or individuals are shuttled back and forth for this test, while this guy, the insurance company disagrees with that test, so they have to send them somewhere else. There's a three month wait to get in there, and it's back and forth and disagreeing. It's a definite waste of funds, but it's also very trying for that individual, whereas, the more coordinated it can be with people who are informed and knowledgeable making those decisions, it can only help the situation. I agree very strongly that case management is a very key role for a lot of those cases and needs to be built in in some way, in some flexible way, for the cases that need it.

The Chair: Thank you very much, Ms Crawford. We appreciate the Head Injury Association of Toronto for their presentation to us today.

WALKER, FOX AND SCHWARZ

The Chair: We now have the firm of Walker, Fox and Schwarz: Jason Schwarz and Mr Gillen.

Mr Jason Schwarz: No, Mr Gillen's not here. You get me alone.

The Chair: Mr Schwarz, welcome. We look forward to your presentation.

Mr Schwarz: Thank you, sir. I provided a summary. What we've done is that my firm, since the draft legislation has come out, has taken the opportunity to go through the legislation and make substantial comment on the various sections in a very detailed fashion with recommendations. We understand how difficult it is for the government to be able to deal with all the issues, and have offered the best we can in terms of support and help in terms of dealing with it.

To give you an idea who we are, Walker, Fox and Schwarz, and myself in particular and Mr Gillen, Mr Gillen sits on the dispute resolution committee of the Ontario Insurance Commission. Our firm processes between 600 and 1,000 car accidents a year in terms of acting as plaintiff counsel; not defence counsel, plaintiff counsel. We probably do as many mediations and arbitrations at the Ontario Insurance Commission as any law firm in the province of Ontario, if not more. We're what we would summarize, ladies and gentlemen, as being in the trenches, and as such what we've done is provided you with information from that viewpoint.

We think any government that is taking on this legislation is facing the impossible task of pleasing a public that doesn't want the cost of insurance to increase, and facing an insurance industry that wants to earn as much as it can. It's a very difficult position. The legislation, as drafted, is difficult legislation, and we've done the best we can to assist you.

What I've chosen to address you on today is only two issues. I trust you'll have the opportunity to review the material we've presented, and I'm hoping it will assist

you in some small way in redefining this legislation, or at least adding to it with regard to its final resolution.

Today I'd like to address the issue of the threshold and the deductible. To do that, I'd like to invent a hypothetical woman whose name is Mary. Mary is a housewife. She has three children, they're 10, six and four, and Mary is on her way one day to buy some groceries and she's rear-ended by a dump truck. As a result of the incredible impact, she suffers what is often called in the insurance industry a simple whiplash. Because of that simple whiplash, the extension flexion injuries that are involved, Mary goes through 18 months of absolute agony. She goes to a hospital, she has some concussion, she receives the best rehab the province of Ontario has to offer, but she suffers, and she suffers incredibly. After 18 months she's almost better, but she's got residual symptomology.

Having done this since 1978 as a lawyer, and since 1976 as an articling student, I can tell you that whiplash is a serious and real issue. Poor Mary has had only the ability to hire a substitute mommy under the proposed legislation at \$250 a week, who's to take the place of what she's been able to do in her home. Her children have suffered, her husband has suffered, but more than anyone else Mary has suffered.

It's now close to two years. She's done everything right. Let's assume she's gone to a lawyer, they filed the appropriate notices—and we've got our own comments in our notes about the notice provisions and how they affect people who are seriously injured or partially injured—but at the end of two years when it's time to issue a claim, she goes to her lawyer and says, "I want to start the action." Her lawyer turns to her and says: "Mary, I know you're still suffering. You still see your doctor once in a while. Your rehab's over. But the real serious suffering's over."

If you go by precedent, as we lawyers in the province of Ontario do, Mary's worth somewhere between—let's use a large range to give the benefit of the doubt—\$12,000 to \$20,000 at the end of two years of pain and suffering. I think that, based on my experience, I can probably talk an insurance company into \$17,500 as a settlement. Who's going to be retained by Mary? What is that woman entitled to? That woman will get nothing.

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Let's call it the way it is. I think the deductible is totally absurd at the range of \$15,000. That is based on the experience of doing 1,000 car accidents a year for 10 years. People suffer serious injuries when their disability continues in excess of one year. I urge this committee, I urge the government, to reconsider the deductible. Both the bar and various insurance agencies, to my understanding, agreed that the deductible should be less than the present \$10,000. I don't even have a problem with the present \$10,000 under Bill 164.

The tort world has always taken care of itself in terms of costs and in terms of the marketplace. What we are dealing with here is a totally different issue. An arbitrary figure of \$15,000 has been selected, and what it is doing is effectively depriving 80% of the people with legitimate injuries that are serious from having any recompense. I do not believe it is appropriate or fair. I believe there should be a deductible, because we have to get rid of the

painful one-year whiplashes. Insurance companies paid \$4,000 to \$6,000 to get rid of these cases, simply because it was cheaper to pay plaintiffs' counsel than it was to litigate. But there should be a deductible of somewhere between \$7,500 and \$10,000. That's fair.

In my scenario, Mary would receive \$8,000, \$7,000, \$6,000, \$10,000, somewhere in that range, as a settlement, tax-free. That is at least something to take into consideration, the fact that not only is she not entitled to receive any accident benefits, but her right to sue was taken away in 1990; now it's being put back on a level that doesn't take into account normal people suffering serious injuries. We cannot only deal with the issue of catastrophic injuries; we must deal with legitimate, injured people.

Under Bill 164, my firm issued somewhere between 25 and 30 statements of claim in the month of January. Those are all for people who were off work in excess of 10 months, people who were unable to return to their normal activities. Those cases will, in the majority, prior to discovery be resolved with the insurance carrier that's responsible to the negligent third party. We believe it's an appropriate level because the marketplace will dictate—I've already had insurers calling me up on 18-month whiplashes, saying: "Jay, we'll give you five thousand bucks, all in. Go away." I sit down with the client, explain the deductible, I explain they're worth \$15,000 to \$17,500 to \$20,000, but without going to the necessity of litigation it's a reasonable figure, and it works.

Tort takes care of itself, people. All of us are trying to meddle with a system that originally wasn't a bad system. It needed to be fixed slightly, but we threw out the baby with the bathwater. It wasn't the present government that did it; it was the Liberal government, and the NDP made it worse. The Conservatives are, at this point, trying to fix it. That's okay; there's nothing wrong with trying to fix it, because it has been broken. What happened was, the original system wasn't broken; it was bent. You don't try to fix something that isn't broken. The present system is broken. The insurers are getting killed, the insureds are getting killed; it's to no one's benefit.

However, there has to be some accommodation to both sides. Part of what this government has proposed is appropriate; part of it is not. Our recommendation is, take into account the real injuries, and they start when someone's been hurt for a year. They don't start when you've been hurt and you've got to issue a claim at the end of two years and you've got to wait three years to find out if you're hurt bad enough. The costs involved are prohibitive. We have to find an equality.

I'd like to briefly mention, before I run out of time, the verbal threshold. I believe the verbal threshold should be thrown out. The Supreme Court of Canada recently, in the *Peixeiro v Haberman* case, stated that the verbal threshold provided that there's no certainty with regard to limitations.

What does that mean in simple English? I've got a client who comes in to see me four years after an accident. The insurer has allowed his reserves to lapse, nobody has thought anything of it, and he says: "You know what? That back injury that I had that everybody

thought was a whiplash isn't. The two-year limitation period has run out, but the Supreme Court of Canada says if I just discovered that I've got this problem, I ought to have the right to sue."

That's what a verbal threshold does. We don't need it. Who cares if it's serious? The fact of the matter is, if you've been hurt for a year and you can prove it in a tort case, you are serious. The bottom line is, what does a verbal threshold do other than create more problems for the litigant, more problems for the bench to decipher it? It's unnecessary.

I urge you to reconsider. I urge you to consider the fact that the courts themselves will deal with these issues—you've got a motion coming in this legislation which we think is absurd, and it's in our material—but the insurer has the right to bring an application to determine whether or not this is a serious injury. It doesn't matter whether it's serious; it only matters whether it's worth enough money to pass the threshold, to pass the deductible. The verbal threshold is simply creating smoke and litigious costs for both sides.

Basically that's where, as a plaintiff lawyer, I can lay it right on the line. You don't need a verbal threshold if you set a deductible. You're double-teaming. You're creating a scenario that costs nothing but money for both sides. We want to save everybody money. We want to expedite the process. The rules of practice have just been changed so that claims under \$25,000 proceed directly to trial. There are no discoveries; they move quickly. That's what we want. I'm surprised this government didn't consider having the Ontario Insurance Commission mediate and arbitrate claims under \$25,000. That would certainly reduce the costs of litigation. That's not in this proposal; that's just a thought.

The fact of the matter is, this government has an impossible task, and Mr Sampson, I wish you the best of luck. You can't please anybody all of the time.

Mr Sampson: I'm beginning to find that out.

Mr Schwarz: The reality is, you've got to take into account really hurt people. We see a lot of people who are sort of hurt; we see a lot of people who are seriously hurt.

I settled a claim this afternoon over lunch for \$350,000. That was a serious, catastrophic injury. I didn't have a problem. The insurance company knew what the guy was worth; I knew what the client was worth; they wrote a cheque.

Those aren't the problems. The real problems in the system are the borderlines; the real problems are the deductibles. The deductible's great, because you know what? A lawyer has to be an advocate. He has to be able to prove the cases. The insurer has these rights of examination, and again, I address the committee and advise you that we've commented on how we think they should work because the way they are now is going to cost too much money for everybody again.

We've tried to approach this on a commonsense level. This is a commonsense government and we've provided commonsense material. We believe this system can work for the benefit of all parties, provided everybody cooperates—insurance companies working on a full-disclosure basis with advocates; advocates trying not to deceive and

to move sideways and confuse, but coming straight at the insurers' advocates. It creates a system that is the true meaning and the true intent. It creates a system where there's disclosure. When there's disclosure you find out what's going on.

What you propose to do with regard to the examinations is appropriate—sort of. We've given you some tips on how to fix it up a little. But the reality is, there has to be disclosure from both sides. What you're missing, Mr Sampson, is the insurance company's obligation to disclose to the insured. That has to be there, because without us knowing what it is we're facing, when they can do this examination on the third party and not have to give me a copy of that medical report, and I go blow five thousand bucks of my client's money fighting an insurer when he's got a med that says my client's full of baloney, what good is it? You're not helping anybody.

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What we have to do is work to a system that both sides are naked, because then the truth emerges. And that's what this all about, and that's what tort used to do, and that's what we have to find within this system.

Anyway, those are my submissions and I welcome the committee to review the material.

The Chair: Thank you very much, Mr Schwarz. You've used up your time, but the committee appreciates your input.

Mrs Marland: I wanted to ask you your fees.

Mr Schwarz: My fees are as much as the law society allows within reasonable and probable grounds. What's fair and reasonable.

The Chair: We won't necessarily count that as a question.

Mr Sampson: Or an answer.

REGULATED HEALTH PROFESSIONALS COALITION ON AUTO INSURANCE

The Chair: We now welcome the Regulated Health Professionals Coalition: Karen Lee, Moira Sonnenberg and Bob Haig. Welcome to the committee.

Ms Moira Sonnenberg: I promise I won't show up again.

Dr Robert Haig: Thank you first of all for this opportunity. My name is Bob Haig. I'm with the Ontario Chiropractic Association. With me is Moira Sonnenberg, who's with the Ontario Society of Occupational Therapists, and Karen Lee, who is a representative of the Ontario Physiotherapy Association.

The three of us are here today representing the Regulated Health Professionals Coalition on Auto Insurance. That coalition represents the following associations: Ontario Psychological Association, Ontario Society of Occupational Therapists, Ontario Massage Therapist Association, Ontario Physiotherapy Association, Ontario Chiropractic Association, Ontario Association of Speech-Language Pathologists and Audiologists and the Ontario Medical Association.

Each of our member organizations have an interest in auto insurance in Ontario. Individually, we have experience and expertise dealing with patient-clients and with the auto insurance system which can be valuable in any

reform process. Collectively and individually we all recognize the need for reform. And while each organization will hold individual points of view on some things, there are a number of broad issues in the draft legislation to which we can respond collectively. We are pleased to be able to do that today on behalf of our member organizations.

The coalition met initially in September 1995 in response to the OMEGA proposal which we felt had been developed without adequate input from health professionals.

In October 1995 the coalition presented to Mr Sampson a statement of principles on auto insurance. The coalition applauds the government for its willingness to consider these principles and adopt some of our concerns and recommendations. In particular, we note the inclusion of the concept of the use of treatment plans. A copy of that statement of principles is attached as an appendix.

While the coalition and individual professional organizations have some concerns and some suggestions, the proposed legislation certainly to us appears workable, and we believe that it forms the basis for a balance between the rights of insurers and accident victims.

The coalition recognizes the concerns with respect to increasing costs of health care and rehab. Under Bill 164 the citizens of Ontario have had equal access to health and rehab benefits for up to \$1 million. Inherent in this system, the 164 system, are some cost control measures. The use of these controls in Bill 164 has allowed some insurers to effectively control costs while continuing to provide effective rehabilitation. It appears that these control measures have been underutilized by some insurers and we know that you have heard from insurers who have been able to provide coverage and control costs under Bill 164.

Ms Sonnenberg: We'd like to take this opportunity to point out to the committee the controls that are inherent in the current system and the controls that are inherent in the proposed legislation. As well, we'd like to draw your attention to the recommendations at the back of our presentation, just in case we don't get to them for time restrictions.

The cost controls that are available to insurers under Bill 164 are:

—An opportunity to request all professionals to prepare a treatment plan. There is currently nothing stopping an insurer from going to a rehab professional and asking for a treatment plan.

—Insurers have an opportunity to regularly contact health professionals and they can obtain a flow of information with respect to treatment progress, barriers to recovery and the residual impairments and disability.

—The insurers have available to them independent medical evaluations of diagnosis and appropriateness of treatment.

—Insurers have the capability of referring to a DAC for an independent and binding evaluation of treatments.

—There is also an ability to complain to regulated health professional colleges regarding practices of professionals.

Under the proposed legislation, there are numerous additional cost-saving factors.

(1) There is a 93% reduction in available health care benefits for 98% of injured individuals. As well, we have added in a stringent definition of catastrophic injuries.

(2) The insurer need not pay for treatment or rehabilitation until they or an independent DAC determine that the diagnosis and description of accident-caused impairments is accurate and the treatment plan to treat and rehabilitate these impairments is reasonable and necessary.

(3) All health professionals and other providers must prepare a detailed treatment plan.

(4) This new requirement of filing a treatment plan for approval prior to provision of services provides the insurer with all necessary information in advance, and thus they can determine if the accident in fact caused the impairments, if the impairments are of a type that can be treated successfully and whether the proposed treatment is appropriate.

(5) The new conflict-of-interest guidelines we feel have some teeth and will allow insurers to act quickly to deal with health professionals directly or through their professional colleges.

(6) Under the Regulated Health Professions Act, each college will have quality assurance guidelines and procedures. These will be binding to the members of those regulated health professions.

(7) The new DAC review committee sets guidelines for assessment and monitors the DAC effectiveness and training. DACs which are reformed, reorganized, with better trained professionals and are monitored can provide timely and effective evaluations.

(8) Multidisciplinary programs must be justified in terms of each role of each professional group. This provides a restriction on runaway treatment and bulging health care costs and can reduce duplication of service.

(9) Treatment beyond the initial approved plan is strictly controlled under this proposed legislation, unlike Bill 164.

(10) Regulated health professional fees for assessment and treatment services are restricted in the proposed legislation to published fee schedules by the OIC, unlike Bill 164 that has no built-in restrictions.

In summarizing the cost control measures, the government proposal is a thoroughly professional, well considered draft legislation that warrants some attention in its final draft. There are some particular issues that need to be reworked. However, we feel it is workable, it's fair and it presents a cost saving plan. The proposed system will reward the knowledgeable insurer without driving up premiums or abandoning the health care needs of injured accident victims.

Ms Karen Lee: I would just like to now present to you two recommendations that we believe would further enhance this proposed legislation.

The coalition recommends that the language of the draft legislation reflect a change from "medical" to "health care."

The coalition recommends that, except when used to describe the medical profession and its services, as for example in clause 15(2)(a) of SABS, the term "medical" be replaced with the more inclusive term "health care" throughout the proposed act and the SABS.

This gives the legislation greater clarity, is more appropriate and is consistent with the use of the terms health care practitioner and member of a health profession elsewhere in the legislation. It is consistent with usage in other recent legislation, and I refer to Bill 165 to amend the Workers' Compensation Act, and it is important for the injured party to realize that health care is available from a variety of health care professionals.

Our second recommendation is that the accident benefits advisory committee and the DAC committee be responsible for setting procedures, guidelines and standards for designated assessment centres, and they must have multidisciplinary representation from all relevant health professions.

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It's imperative that the decisions of such committees, and therefore the protocols of the DACs, reflect the principles of the Regulated Health Professions Act and contemporary health care in Ontario. For example, a review of management of an injured person or a treatment plan for a person must be by a health professional from the same profession or specialty, or a team of professionals, that includes a provider from the same discipline or specialty.

In conclusion, the finalization and the implementation of the new automobile insurance legislation is crucial to the citizens of Ontario. The Coalition of Regulated Health Professionals is able to continue to provide input regarding the consensus of health professions on this important issue. We are available to the legislative committee and to the government in the further evolution of the automobile insurance reform.

Mr Crozier: Thank you. Just one quick observation that you may want to comment on is "the insurer need not pay for treatment or rehabilitation" etc; in other words, access to quick response to treatment. You have said that the only exception is the modest payment within six weeks for chiropractic and physiotherapy. Could you comment on the need for quick access, even prior to the plan being in place, and how important that is?

Ms Sonnenberg: I am at risk here in speaking on behalf of a large group, and questions that may come to me I may have to check with the rest of our coalition members. I'm at risk of being pelted with—

Mr Crozier: Rather than make a mistake, you can check and let me know later.

Ms Sonnenberg: Could we do that?

Mr Crozier: Sure. That's fine.

Ms Sonnenberg: We'll record the question.

Mr Crozier: That's the only question I had.

Ms Lankin: Thank you for your presentation. I appreciate some of the comments you made in congratulating the government on taking some steps to tighten up some of the problems that were inherent in Bill 164, particularly with respect to medical rehab and the treatment plans and those sorts of things, and I agree with that direction the government is taking.

The concern I have is, this whole process is being driven of course by trying to stabilize rates. Some insurance companies are telling us that tort is going to take us back to unpredictable rates, and some insurance companies are telling us that it is the growth in medical

rehab payments that have been fuelling the increased premiums under Bill 164. We've had others tell us that if the insurance companies stopped the kind of litigious approach that they take with respect to disputing treatment plans by qualified health practitioners and sending people for all sorts of multiple assessments, whose costs are included in those burgeoning medical rehab costs, perhaps we wouldn't be seeing the same kind of pressure in terms of premiums. We've had others who have said that if they just spent the time to deal with fraud, as they should in terms of good business management, you might be able to leave the benefit levels higher for accident victims.

There's a lot of mixed advice in that for the committee to try to deal through, but in terms of your perspective on medical rehab costs, what's been happening? Some measures are going to tighten it up here, but do you see the insurance companies' requests for multiple assessment and their relationship to either case managers or qualified practitioners' treatment plans as being a problem in the system, and is there a way we could try and get at that? Insurance companies call it the gatekeeper problem.

Dr Haig: First of all with respect to tort, we're not really in a position to talk about that at all. You'll appreciate that we're a coalition of a number of associations—

Ms Lankin: No, I was only asking about med rehab.

Dr Haig: —and before we do anything, we'd have to go back to them. We can't really comment on that one.

Ms Lankin: No, I wasn't asking you to.

Dr Haig: I think it's fair to say that the approach that is being taken now, particularly with the treatment plan and the setting up of the DACs to review a treatment plan that the insurer wants to question, we tend to think is an appropriate one and is going to streamline that sort of thing. There will be a learning curve for insurers, there's no question about that, while the adjusters learn how to evaluate treatment plans essentially and make decisions on them. But it seems to us, and I hope I'm speaking for—

Ms Sonnenberg: We'll kick you if you're not.

Dr Haig: She'll kick me if I'm not speaking for everyone. It seems to us that process can work better than what exists now. But remember, we started off by saying that there are insurers, and you know them, who have been able to function very well under Bill 164 by working within that to control costs and keep their rates stable. It will be easier to do that under the new scheme, we think.

Ms Sonnenberg: Just to elaborate on that, I think there's a mutual responsibility to look at the costs. There needs to be some ownership on the insurers' perspective and there's some ownership on the perspective of the rehabilitation professionals. We're all trying to get the same thing. What we want is to rehabilitate the individual, to get them back to work, to restore their function. We're all talking about the same outcome goal. How we get there certainly needs—I think it's very workable. If we put the insurers in the same room with the rehab professionals, I believe we're all talking the same language. We want effective, efficient medical rehab intervention with a goal towards functional restoration. How we get there seems to be under dispute.

Mr Spina: Good to see you again, and thank you for your comments.

Ms Sonnenberg: I'm not sure about that.

Mr Spina: No, it's all right. I was drawn particularly to your second recommendation, that the ABA committee and the DAC be responsible for setting procedures, guidelines and standards. Earlier today we had some submissions that talked about the control of case management. This ties in a little bit with what you were talking about with Ms Lankin, how can some interference be done or some movement be done that can involve all of the professionals? The case management they were talking about, someone has to be the captain of the process. Should it be a DAC, should it be the doctor who in most cases it is now, should it be the insurer or should it be the key rehabilitative person, shall we say? I wonder if you can have some thoughts on that.

Ms Sonnenberg: I'm really sorry. I have my own personal opinions on that matter and certainly as an occupational therapist I have some opinions on the matter but we will need to take that back to the coalition for a consensus response.

Mr Spina: Was that a heavy question? I'm sorry.

Ms Sonnenberg: I just don't feel comfortable giving an opinion that is not necessarily the opinion of all the members of the coalition.

Mr Spina: Okay. You're talking about procedures and guidelines. What would be a reasonable time length to maybe put some of those in place, in your opinion? Do you have some feel for that?

Ms Sonnenberg: I don't understand the question.

Mr Spina: You're talking about getting the committee for some procedures, guidelines and standards for the DACs that have multidisciplinary representation from all the relevant health officials. This is what you've stated here.

Ms Sonnenberg: We're ready to go. We need some direction from the minister to jump in right there and we're ready to go.

Mr Spina: And you're away, good. Thank you.

Ms Sonnenberg: Bob, did you have an additional response?

Dr Haig: No, it sounds like you did it. That's fine. I was going to take longer to respond, but you did fine.

Mr Sampson: Thank you for your presentation. One of the items we've heard a number of times so far is that we need to come to grips with fee schedules. Do you think the determination of the fee schedule should fall within one of the tasks of this committee? Not this committee; the one that the minister sets up.

Ms Sonnenberg: I certainly would feel that fee schedules set with the committee that has involvement from all the different regulated health professional groups—my impression is, most of our professional bodies have those fee schedules in place and there are guidelines right now for our membership. Those fee schedules are available to us.

Mr Sampson: I think the dilemma though is that probably more often than not the fee schedule is not terribly adhered to as it relates to an auto claim. Is that not correct? There's some deviation from the fee schedule; should I put it that way?

Ms Sonnenberg: From the occupational therapy perspective, we've just recently done a survey. To be perfectly honest with you, it's surprisingly higher than we anticipated, and we are looking at the validity of that survey. So it's an ongoing process for us as an organization.

1640

Mr Sampson: But do you have any sort of difficulty with that being set within the committee structure so that we know, so the insurers have some ownership as well as the health practitioners, as to what that fee schedule is, at least as it relates to an auto claim?

Ms Sonnenberg: My understanding is that the fee schedules will have input from the committee, which is made up of the multi-disciplinary professionals, that would then have input from their bodies, so it will be fed down through the system. Then it's fairly safe to say that those fee schedules would be something that the professional bodies would be able to live with because it would be coming from them to the committee. Is that fair, reasonable?

Dr Haig: Yes. What exists now in the draft legislation is reference to a fee schedule for assessment fees and other things like that. There's nothing in there, I don't believe, with respect to treatment services, for example, diagnostic services. I'm not clear on what you're talking about.

Mr Sampson: I'm talking about the bigger, expanded picture. I'm talking about the bigger football field.

Dr Haig: I thought perhaps you were. I can't speak for the coalition in this thing. I think that it will be very difficult to get consensus between professions and insurers if it's set up so that the insurers or that committee established a fee schedule. Services tend to differ, and the reasonable and necessary title that will be applied to things—I think you will need to rely on the associations and then the licensing bodies to determine what is reasonable from fees. I've sort of stepped out of bounds and I'm telling you that is my personal thing; that's not the coalition. Thank you.

The Chair: Thank you very much, Mr Haig. We appreciate the presentation of the regulated health professionals coalition in helping us in our quest.

ABDUL BAPOO

The Chair: Abdul Bapoo, welcome to the committee.

Mr Abdul Bapoo: Thank you, ladies and gentlemen for giving me a chance to speak here. I feel a little bit disadvantaged because I didn't really get the draft legislation to review, but nevertheless I think some of the points I want to mention will strike home to a lot of people. Certainly, myself being one of the victims of a car accident three years ago gave me a lot of insight into how the insurance industry operates.

Maybe I can just start by saying that no matter what the system is, whether it was six years ago or whether it was four years ago or whether it was two years ago, people are never going to be happy. The insurers are always going to complain and so are the insured, so we are all going to be faced with this problem no matter what. What I see sometimes, many times, is that when an insured abuses the system, it is headlines in the Toronto

Star, that this man got \$76,000 for an injured finger. Oh, this is great news for the insurance industry.

What about the flip side of the coin here? What about the reality. The estimates are that about 15% of the people actually abuse the system. So 85% of the people are subjected to that flip side of the coin, and what is the flip side of the coin? I'm going to talk in hypothetical terms. I just want to demonstrate some of the issues that I have faced or rather that people may face, and maybe you can make conclusions and reinforce yourselves, when this draft legislation comes through, that some things should be made mandatory as opposed to discretionary.

We've got an accident here, but according to the Insurance Act right now, regulation 668, the sole onus for fault determination is on the insurer, not the insured. We've developed a set of guidelines, fault determination rules, that took out this degree of subjectivity and hopefully was supposed to give some sort of a guidance, to say: "Yup, a fender bender. You're at fault. You hit the car at the back." But what I'm really concerned about here are the serious injuries, the ones that cross the threshold. Let me give you a case here where we've got two cars coming opposite each other, one car slides off the road, smack, bang in the front of the other vehicle, all three people are unconscious, one almost dead, the police officer comes down an hour or so later and the opposite driver, not injured, says, "Oh, he hit me," so that's what the police officer writes down and that ends up being your fault determination.

"Fault" in Roget's dictionary and Webster's dictionary—"faultless" is defined as without guilt or blame. For the first time, and maybe it's the short time that I've been in Canada—it's not that long, 13 years—I am seeing guilt being defined by administrative people, where you pay first and then argue it out later. When can you argue it? If you have the intellect, if you have the knowledge, if you have the money and if you have the knowhow. These are administrative people. Are they trained? I wonder.

I have seen many cases. I was just on the phone. It's too expensive. Determination is no longer an issue here. It's become fault assignment. I would urge the committee to take that into consideration, that when they say "fault determination," they actually enforce it, determine especially for the serious and the most important ones where you cross the threshold limit.

The secondary portion is that it's all too easy for an industry that's talking to each other on the phone. You've got an industry and you've got a guy here who's really injured. The tort claim on this chap's going to be probably in the millions, or maybe in the hundreds of thousands. "Let's assign the fault to this chap." Now this guy is left on his own, provided he has all four criteria that I said: the money, the knowledge, the intellect, the knowhow, going to the right people and following through the system. He's out. He's finished. He's determined as almost guilty and that's it. His whole life is almost destroyed. An insurance industry talking to itself like this is a buddy-buddy system all the way to the bank. Something is wrong.

In 1990, when the Liberals passed the no-fault legislation, and specifically on May 20, 1990, the word "cherry-picking" came up several times. What cherry-picking

meant was that the insurance industry would not choose people who are good insureds. By "good" I mean those who have collateral benefits and all the perks so that in the event of an accident they would only have to pay the excess, and the excess would be very small. Those who don't have collateral or don't have good jobs and so on wouldn't be picked. So the Liberal government passed the legislation that cherry-picking was specifically denied.

But we've got a back-door approach in this system here. We've got in an accident and we've got a faulty fault determination system. They dump you into Facility. What is that? That is exactly what we try to avoid. We put people out—you take them in because the government's told you to, but you dump them fast.

1650 Now, Facility is a non-profit organization, supposedly, but it's also a non-loss organization as well. It's not out there to make a loss. So it serves two purposes here now. If we define fault arbitrarily on the phone without determination and what it meant, we can kill two birds with one stone. We can put some good drivers into Facility, and where the loss was occurring, suddenly now the balance sheet looks better.

I think a little more detailed look should really be taken into this approach, because I have seen this occur. I am presenting this as a hypothetical issue, but I think most people in here will understand what I'm trying to say and why I'm saying this.

Also, the third thing that it does is that as soon as it dumps you into Facility, we face this public concern, and we've got kids out there, 19, 20, who say: "I don't want to pay that sort of money; I'll drive uninsured." So fault determination becomes very important. If initially it's wrong, the entire system just breaks down. It just screws it all up.

I'm just going through some of the things that have been expressed to me and I'm expressing them back, and hopefully you will take those into consideration. An injured person—and I'm not talking about just the general whiplash case here; I'm talking about seriously injured people, people with their legs cut, people with their hands broken, people with their heads and skulls broken. Transportation to and from therapy centres: Again the Liberal government—and I have to commend that, really—made it a mandatory requirement for the insurer that when transportation to a therapy centre is needed, they will provide it, and if there is a dispute about that, they will still provide it pending resolution. They can go to court, whatever, and resolve that matter at that point in time.

Now, there is a phenomenal economic benefit for an insurer not to provide taxicabs, because taxicabs are expensive for them. Why should they? I mean: "He's only got a broken leg or two. Maybe he can still drive. Push him. That way, we pay him 22 cents a kilometre or 25 cents a kilometre, and that's cheaper for us."

What does that do? That puts the security of life of that person in danger. It's a violation of his charter rights. Admittedly, you can't sue an insurer for violating charter rights; it's the legislation. If the legislation had intended to say to the insurer, "Yes, you can do that by tacitly approving these methods, the drive to these therapy

centres," then something goes wrong here. It's a violation of a security-of-life charter guarantee, basically.

What happened in 1994? Initially, the mileage/kilometre rate was at 22 or 25 cents a kilometre per the insurance industry. That's what they were paying people. The government comes down and sets it at 15 cents. CAA, by the way, says 34 cents. Now there's even more incentive for the insurer to induce into these practices where the abuse to the insured is phenomenal. Not only does he take his life into his hands, he takes the public's life into his hands, and the insurer is laughing all the way to the bank.

Hey, what can we do about it? We'll take them to court. And that's what I'm doing. I'm going to take them to court. Do you know what the punitive damages in courts are? They are a joke. They're \$10,000, \$15,000. We have to put some teeth and some fairness into issues that affect people's security of life, that affect their livelihood.

The third aspect there—some people probably can't see it—is business practices that go on by the insurers. Of course, the first two touch on it, they're part and parcel of the business practices, but a third thing that comes in here is that there is an arbitrary decision, a relatively arbitrary decision, in many cases: "We're going to cut off his benefits. We're going to squeeze this guy." It goes to mediation and they squeeze and they squeeze and they squeeze, and it's difficult to live. You are forced to break or undermine the income tax laws, because now, if you have to have something done and you're seriously injured, you have to hire somebody on a cash bases, because if you pay the full sum and he gives you a receipt, then gee, you're going to have to pay that much, and the insurer is not giving you anything. So gee, now what do I do? So there's an inducement to break the income tax acts, to break those laws.

How do we squeeze, initiate, make him desperate, and just at the right time, when the picking is correct, make him an offer and tell him that that settles all the matters? What's the guy supposed to do? He doesn't have the money. He doesn't know where to go. He comes to the OIC, which turns him down. They don't even want to listen to him. Mr Sampson, you're aware of this. What does the guy do? But these are business practices that are being done even today. It all boils down to the cost of breaking the law versus the benefit.

I've got a sheet here that shows 20 special awards. A special award is given when a company acts in bad faith. Now this is dating right back from 1991 to 1996 and it is limited to a maximum of 50% of the amount due. It pays the insurer to engage in these practices. These awards shouldn't be discretionary; there should be mandatory fines. It's only at that time when they'll say, "We'll treat you right." And maybe they'll get a correct response from the opposite side as well. I've seen throughout my life experience that if I'm on the level with one person, I get a level response, or generally a level response, or somewhere there, but not two in 10.

Finally, we come to the issue of the OIC, the wonderful mechanism that we were supposed to have that allowed easy, quick, prompt action for the public, access where people could go and have their complaint resolved

fast. What happens up there? The poor guy walks into the OIC and the insurer invariably has this high-strength, high-powered lawyer on the other side. Where is the balance? There is no balance.

1700

Regretfully—and this is maybe my opinion only—I have come to the conclusion that the OIC has almost become an extension of the insurance industry. It is not, in my view, an independent commission. Mr Sampson, you're aware of something similar, of an issue that I raised with you a week ago I think on a similar matter.

That's all I've got to say. There's a lot of emotionalism here, but I hope you'll forgive that, because it's been bottled in for a long time.

The Chair: I appreciate the emotion, Mr Bapoo. It's understandable. Thank you very much for your presentation to the committee today.

FABIO LEONE

The Chair: Our next presenter is Mr Fabio Leone. Welcome to the committee, Mr Leone.

Mr Fabio Leone: Good afternoon, ladies and gentlemen. I've got a very prime concern with the insurance industry. I spoke to Mr Rob Sampson concerning this matter here. Rob Sampson has a very good idea of the insurance industry. As far as I'm concerned, through the Ministry of Health there, I explained to them too that after seeing over 21 doctors, I have no state of mind what kind of professional doctors are out there. That's my number one concern.

Number two: Insurance companies decide to discontinue people's insurance policies—we can't understand why—because I guess when the insurance industry gets you in a deadend street, there's no other alternative streets to get out of. What I don't understand is why the insurance company has enough power to do these things. Right now I have so much paperwork here, which I should be handing over to the newspapers. That's the number one thing I'll be doing tomorrow morning.

The third issue: Insurance companies, as far as I'm concerned, don't protect the public. They do things on their own behalf. Whatever pleases them, that's the way they do it. But unfortunately people pay premiums to be covered just in case an accident does happen. My prime concern is that it looks like they don't do that.

You, being the Chair, I'd like you to answer my questions about why the insurance companies get away with these things and why they do whatever they want. Who gives them enough power?

In the States last year, they made over \$3 billion profit. I don't know if you were aware of that, if you ever watched the documentary on that. That's quite a bit of money, \$3 billion profit. I wonder what the figures are in Ontario here or in Canada. That's what I'd like to know. Maybe the public doesn't know about it. I think that the insurance companies should be, obviously, publicly run. That's the way I look at it.

Maybe the health department would save a lot of money on certain departments where they waste a lot of money. A prime example: myself, 21 doctors. But I'll tell you right now who figured out my problem: a chiroprac-

tor. Maybe they should be looked at a little bit more than just physicians.

I have a major complaint about a physician who works for the insurance industry. I'll withhold that information right now and tell it to the newspaper. But I'm sure this information will be provided in the newspaper tomorrow concerning the insurance industry. The way they are is really inappropriate. They're here to protect the public.

I have another problem with the government of Canada too. I have documents in front of me. I have spoken to the Ministry of Finance concerning this matter. I'll have nothing to do with that right now. I'm here about the insurance topics.

What I can't understand is that the insurance companies make so much money, but there's always an easy way to settle your claim very quickly, like they tried to do with me. Unfortunately, it didn't work with me, because I have a certain insurance company on misconduct and negligence on my behalf. I won't mention the insurance company's name. I'll hold that back until a newspaper gets hold of it, because it's probably not only myself but probably thousands of other clients that the insurance company wrongfully closed their cases. That's maybe why the workmen's compensation board is so much in debt because the insurance companies are too busy sending their clients back to work. Workmen's compensation, because they go back to work unattended, maybe some doctors there figure out exactly what is wrong with them. There's a lot of factors the government should look into, lots of factors.

If you send somebody back to work, he gets reinjured. Maybe he wasn't healthy to go back to work before he settled his case. Maybe he returned back to work and sustained more injuries because his injuries weren't diagnosed properly. So what happens? He goes back to work, goes to workmen's compensation, they give him a hard time. They point fingers back to the insurance company and the insurance company says: "No, you went back to work. Therefore, we've got nothing to do with you. Your claim is closed." There's a lot of factors that people don't know about.

What are you people going to do about it? Let the insurance company win all the time? Big corporations pay 4% of tax, corporate taxes. The innocent working person who tries to make a living has always a hard time. Now you guys want to raise insurance, and I don't see the point of doing that. You guys should have a scale of good drivers, bad drivers and whatever. Maybe you people should educate people the real way of driving instead.

I hear a lot of stories. A couple of months ago in Scarborough, there was a government person approving drivers' licences under the table. Did you guys let the people know about it? No. That was in a newspaper. How they got that information, maybe they have ways of finding out. I'm sure you people didn't provide the information to them. They have ways of finding it, like the ways I did it.

Like I said to the insurance company, they picked on the wrong person. I'm going to come to the bottom of all this and make sure the public realizes what the insurance company is really about. When insurance companies are

making \$3 billion profit, that's quite a bit of money. Maybe the government can utilize that money and use it somewhere else and create jobs and put people back to work instead of cutting people's jobs like the government right now wants to do.

Let's get together with it and figure out what the best situation is to correct the problem. Increasing the insurance companies, the policies, the premiums and all that, is not the answer, not the answer at all. You've got to make a scale and provide for the public, not for the big powerful companies so they think they have enough power to do whatever they want. Well, that's a mistake, because the public's not going to tolerate that any more.

For instance, the government now wants to cut so many jobs, 13,000 to 17,000 jobs. That's a little overdoing it, too quick, too fast, too soon. Let's say a little at a time, let's see how things go. You guys want to break everything in half and say whatever happens happens. That's not the way to go. The economy recovers by people working, people paying taxes, the money gets pumped back into the economy and everything starts going. That's when people create jobs. But cutting jobs, cutting jobs, cutting jobs—

I haven't really properly looked into the regulations of the NDP government, the previous government, but as far as I'm concerned, a no-fault person—well, what's the sense of paying insurance? If someone gets in an accident, they sue the at-fault driver and the at-fault driver loses whatever is in his possession. The insurance companies are making all kinds of money because they give you a little settlement, you go after the other person. He loses his house, he loses his car, he loses his assets. That's not the way. The insurance companies are pumping money back into the bank and making tons of money.

I don't know if I'm going to get any answers from the Chairperson on that. Unfortunately, it's unreportable in this country the way the insurance industry is run. And \$3 billion is quite a lot of money, so maybe the insurance companies should be regulated properly; bring in new legislation, change the law so that it doesn't benefit the insurance company but benefits the public itself. That's the way I look at it.

1710

Mr Sampson: Mr Leone, I've flipped through my notebook to see whether I had a record of our telephone discussion. It must have been over a month or so ago, because that's as far back as that notebook goes. I can't recall your individual situation and I don't want to talk to it here.

Mr Leone: I have no problem with that.

Mr Sampson: I think what you're driving at is that we need some procedures to properly deal with unfair market practices as it relates to dealing with claimants.

Mr Leone: Exactly.

Mr Sampson: I agree with you, as I think I did in our telephone discussion. We've attempted to do that. The actual current legislation has a lot of sticks in it, so to speak. What we need to do is get the mechanism to allow the regulator the authority and, more important, the ability to use them. One of the sections of the regulations we have written in says, "You don't have to wait, Mr Regulator, for a trend to be displayed with respect to bad practices. One situation alone is sufficient for you to tell

the superintendent that we need to have some attention drawn to this case." As I've been saying, whack the company over the head with a telephone pole as opposed to a toothpick. We've attempted to do that, but I sense that maybe that's not far enough, as far you're concerned. Is that what you might be driving at?

Mr Leone: Yes. It's not far enough. For example, I had an ambulance January 10, and they didn't get paid until July 7. Do you know how many months that is? Seven months after.

What they do is, like the gentleman before said, they trap you, they cut your benefits, they do this. That's the tactic they use. People have no choice but to go back to work, and that is it. That's not the way to operate. There are a lot of fraudulent claims out there, but it makes it bad for the good person. Unfortunately, that's not the way to go.

I don't think anybody out there wants to get into a car accident, but things do happen in life. You can walk down the street and a telephone pole might fall, a street lamp might fall. Nobody knows. Unfortunately, that's the way it looks, and that's why the public has to be informed about all this and the public has to be set up with exactly what benefits them, not what benefits the insurance company. They make tons of money. In the States, they made \$3 billion profit. Who knows what the figures are here? It could be even more. Well, not more, because obviously more people live in the States than in Canada, probably 10 times the population. But that's not the point.

The point I intend is that the public has to have more safety towards their insurance policies and they have to be covered in the proper way. Insurance companies have no right to cut you off, reinstate you, cut you off, whenever they feel like it. Maybe the insurance industry should find better doctors to work for them. That's the way I look at it.

There are a lot of names I could mention right here, but I won't do that because it's a private conference here. I'm going to have to give this to the newspapers and let them run the story on it and maybe the public will be more alert to what exactly the insurance industry is all about.

I'm going to make sure 100%—if I have to bring 50,000 petitions here, I will do it. Believe me, I will do it. I'll go to every doctor's office in Ontario and ask them: "What are your injuries? Are you satisfied with your insurance company?" I guarantee you that I'll have so many signatures that it will be unbelievable. A lot of people out there I talk with are very displeased with the insurance industry, and something has to be done about it—very serious stuff.

Life is short. Nobody has the right to be in a wheelchair. Nobody has the right to have a cane. Nobody has the right for all that. You prevent injuries that could get serious, not just say: "Okay, close the book on this client. Send him back to work." That's not the way to operate. You have to operate the proper way, the civilized way, not that the companies go to the bank and deposit big cheques and thousands of dollars and do whatever they want.

I think that's it for me. I don't have much else to say.

Mr Kwinter: I would like to address what you've said. There's no question—it's one of the major prob-

lems, and I think you're a prime example—that there's got to be more education of what insurance is, how it works, what the rights of the insured are, what the rights of the insurer are, because there's a lot of misinformation.

Mr Leone: Yes, there is.

Mr Kwinter: With all due respect, the amount of money they make is not the criterion; it's their return on investment. I've said this before in other venues. An insurance company could make \$3 billion, but they may have invested \$100 billion, so that \$3 billion is a terrible return and your shareholders will be very unhappy.

Mr Leone: I realize that, but the difference is, if they're reinvesting into the economy maybe they should invest in a human being, okay? Life is short, like I said. He might be able to stand up today, but tomorrow he might wake up in a wheelchair. Those things you have to look at.

This is a perfect example, since you brought this up: rehab clinics. Why don't the insurance companies provide proper rehab clinics and proper doctors if they make so much money and reinvest it into the economy? Why don't they hire proper doctors? Why don't they have special facilities? As far as I'm concerned, hospitals should do rehab, not just a rehab like a variety store. There's a variety store on all four corners of an intersection, right? That's what happening with the rehab clinics, and rehab clinics are making a lot of money too. You have to get proper rehabs for people to get healthy and people to get back to work. That's why the health system is so much getting drained and getting drained, and workmen's compensation is getting drained and getting drained, because they hurry to pump them through.

You said the insurance companies pump in money. Why is workmen's compensation so much in red tape? Do a workmen's compensation investigation and see how many insurance patients have had to go back on workmen's comp. Maybe that's why there's so much money being missed out of workmen's compensation, because workmen's compensation is picking up the tab for the insurance companies.

Ms Lankin: I really want to thank you for coming. A number of other accident victims have expressed their actual experience with a company. I appreciate that you're talking at a more macro level in terms of some of the problems in the system. It seems like the companies are getting a return on it, the rehabs are getting a return on it, the lawyers will be getting a return on it, but the accident victim is having a lot of trouble in terms of restoration of quality of life and getting the return on the contract that they contracted for by paying premiums.

I wanted to ask you about your reference to the Ontario Insurance Commission. They're a regulatory body, and you said you thought they were becoming like an extension of the insurance industry and that there was no ability for you to get any satisfaction in going to the OIC.

Mr Leone: I was very unsatisfied with them.

Ms Lankin: Could you explain that to us? Except for the previous speaker, whom we didn't get to ask any questions, we haven't heard much about the OIC and its role interacting with members of the public.

Mr Leone: Going to mediation is just a standard thing. The insurance company's in front and you're at the other

side of the table, and you have the lawyer there. What they do is they make you an offer of a settlement, okay? The settlement they made to me, as far as I'm concerned, was really pathetic, and that's what really got me angry. Lawyers are supposed to represent their client. I don't know how many lawyers represent their client or work with the insurance company; I can't answer that. Sooner or later I'll probably look into it, but right now what I don't understand is that you hire a lawyer and he works on your behalf, and he charges you, let's say, \$100 a month for correspondence, photocopies and this and that. How many photocopies do you do? How many conversations over the phone do you do? They're the lawyer; you don't like doing the work for them. They like to do it for yourself.

I'll give you a prime example. In 1987, I believe, I was involved in two car accidents. This lawyer here closed the second case before he closed the first one. How he did that, I really don't know. He closed the second case before the first one. In my common sense, you close the first case first and you keep the second one open. But he closed the second one first and closed the first one after. That's another factor that the government has to investigate and do what's best for the public.

I think the best way to regulate all this is government-run. That's the only way I look at it. You put more people to work in the government and you get more satisfaction. Believe me, the public will really appreciate doing it that way. A lot of people are frustrated with their insurance company, lots of them. What's this nonsense here, raising the insurance 18%, 16%? That's nonsense, because the good driver pays for the bad driver. Accidents happen, no doubt about it. Accidents happen. You can walk down the sidewalk and trip over a bottle or whatever. Things do happen, but you pay insurance to be protected in case something happens. As far as I can see, in my own case, it didn't work that way, and thousands of other cases. I'm here not only on my behalf; I'm here for the public too. I have a very prime concern about the public, and I think the only way the public will be happy, like I said earlier, is to be government-run.

The Chair: Thank you very much, Mr Leone. As we move towards decisions in the insurance industry, we will take into consideration your presentation today.

Mr Leone: I appreciate it. Thank you for your time.

The Chair: The committee will take a 20-minute recess.

Ms Castrilli: Is the next person not here?

The Chair: The next two people are not here. We will reconvene at a quarter to 6.

The committee recessed from 1724 to 1741.

TOM DAVID

The Chair: We welcome Tom David, of David and David. Welcome to the committee.

Mr Tom David: Thank you very much. Let me introduce my background a little. I'm a lawyer. My practice is restricted to personal injury. I've been practising personal injury law for over 20 years now, and during that time I've dealt with many thousands of cases and I've been in many trials as well. As such, I've had occasion to meet many people who have fallen between

the cracks as a result of their circumstances, circumstances that were beyond their control and circumstances for which they were not at fault. It's for that reason that I'm here.

A lot of the criticisms I would have for the legislation have probably been adequately presented by other lawyers and other people before me, such as Lawrie Mandel. I'm going to restrict my submission to a couple of small areas.

In respect to the verbal threshold and the deductible, my submission is that the verbal threshold is just another opportunity to cause confusion. If the purpose of the threshold is to get rid of the small cases, the small injuries and the ones that are more of a nuisance value, the deductible certainly does that.

When a lawyer takes a case, he does so on the basis of how much he feels he could get in court. The insurance adjuster will pay according to what he feels a court will give. If the argument is that by giving a deductible, the lawyers will simply say, "If the deductible's \$15,000, give me \$20,000 because I want \$5,000 clear," it doesn't work that way.

If the deductible is \$15,000 and I feel as a lawyer that I won't get \$15,000 in court, there's no way on earth I'm going to touch that case, nor would any other lawyer. It's a business, and they won't do it; you can't have a client pay for that sort of service where they're going to get nothing out of it. Going to court is expensive. Making a claim is expensive. It means having to put a lot of money up front, and most personal injury lawyers will do so on their own. We usually spend many thousands of dollars in pursuing a claim. We won't do it if there's nothing at the end of that claim.

By keeping the deductible, you've eliminated all the minor cases, you've take a lot of confusion out of the system, you've eliminated the need for insurance companies to test in each instance whether this verbal threshold has been met or not met.

I'd like to say a little more about the deductible. When you make the deductible \$15,000, what you're talking about is, is a jury going to give \$15,000 or more? Jury awards have been fairly stable over the last probably 10 years. I haven't seen much increase in them. A one-year whiplash is worth anywhere between \$5,000 and \$10,000 for pain and suffering, a two-year whiplash is worth anywhere from \$7,500 probably to \$12,000, and that's it.

If your threshold, as an example, was \$7,500 or \$5,000, most lawyers would not take that case if it's a one-year whiplash because they could get shut out. Nobody's going to court if they get shut out. A \$15,000 deductible represents the middle of a range. If something's worth \$25,000, a jury may very well come back with a \$15,000 award. No lawyer or sensible person will take the risk of going to court for that money. It's just not worth it.

The insurance adjuster realizes that, as does the defence lawyer. They will not give in on that; there's no point. Each side knows what a jury will reasonably give and each side knows when the other side is going to bluff, and they simply won't go with it.

When you're giving a \$15,000 deductible, in reality what you're doing is setting a \$25,000 threshold, because

cases worth \$25,000 are on the borderline of whether somebody will risk actually pursuing that claim. Nobody takes a claim on the basis that they may give it up after spending a couple of thousand dollars on medical reports.

My first submission is that the verbal threshold be eliminated; that a deductible is sufficient to eliminate the small cases, and it will save a lot of court time. My second submission is that the \$15,000 is excessive, not only in itself but because you have to take it in context of the effect it has on the plaintiff community, that in effect you're stopping claims that may be involving three years of pain and suffering, or more.

In Mr Sampson's speaking notes that were handed out, on page 5, it says, "To ensure this auto insurance system doesn't create significant additional cost to the public purse, our proposals would enable the government to recover from insurance companies a significant portion of the public health care system cost for people injured in automobile accidents."

One of the costs to the public purse, and a major one, I submit, is people who slip between the cracks, people who can't meet their mortgage payments because they've been cut off by an insurance adjuster who can do so simply because the insurance company says that's what you do. You don't need medicals. You simply say: "That's it. You're not getting any more treatment; you're not getting anything more. We're sending you to a DAC, and that's it."

People slip through the cracks. They don't pay their mortgages, they get foreclosed. You have to understand that the people who are injured are usually suffering from severe depression as well as the pain. One of the first things I've always told my clients when they come in, as a husband and wife, is, "I'm not a psychologist, but I could tell you that you may find some tension." Frustration thresholds become very low and what you find is arguments. One spouse, who doesn't understand what's going on, resents having to do all the work of the other spouse.

People fall between the cracks because they have nothing to look forward to. They don't see an end. They're not going to get back all their moneys. They're getting cut off early. They're losing their house. They're getting divorced. They're not getting the rehabilitation that they're supposed to be getting under the insurance plan. These people are the ones who are going to go on welfare, and they will be the burden of the public. These people are the ones who are going to develop the chronic pain syndromes that you see, which some people discount but are very real and are very much supported in the medical community. These people will be a burden on health care because they will go and use those facilities far more than I think this legislation anticipates.

1750

When you cut people off from rehabilitation, you cut people off from benefits and you intercede into their life more the accident itself has, then you get these problems. It's one thing when you know that after four or five years you're going to get this money. It's another thing when you see that the system appears to be stacked against you. I believe this legislation helps create that sort of situation.

I think the insurance companies have far too much power in terms of discretion. My submission is that it's unreasonable for an insurance adjuster with grade 12 education, perhaps his second day on the job, simply to cut people off at will because that's what the insurance policy is.

I'd like to mention also about the DACs. I hope that it was misstated in the *Law Times* I was reading this morning where they said that there was a proposal that the DACs be binding. If the DACs were binding, I think that would be the greatest tragedy of all the different things that I may have found in this legislation. The DACs generally are composed of doctors who have been involved on the defence side over the years. Doctors have become very politicized; they take sides. They've learned to do that over the years. There are doctors who are actively engaged in litigation medicine and those doctors have had their own little blinders on. You can't help but have that happen if you're doing one side predominantly over five to 10 years.

I say that because the doctors I've encountered in DACs have predominantly been doctors who have been on the defence side over the years in the trials I've been involved and are still in court on the defence side and probably—I'm making a guess here—30% or 50% and sometimes 80% of their income is dependent on insurance companies and insurance-style lawyers.

Medicine is not a science, it's an art. Rheumatologists, for instance, are quite convinced that there's a syndrome called fibromyalgia. There's a court in BC or in Alberta where, based on the evidence, a judge decided no. I've had a recent case of fibromyalgia and the jury awarded \$650,000 for it. It's something that's real.

Doctors can easily take one side; it's an adversary system. They can easily hang their hat on which hook they decide best suits them or which side they're politically inclined towards. It's easy for a doctor to say there's nothing orthopaedically wrong with a person because there isn't, it's a soft-tissue injury, but that's what defence doctors do. There's nothing orthopaedically wrong; they muddy the water. I'm not saying they're lying; I'm saying that they're presenting a view which I consider perhaps distorted, but they're presenting their view. DACs tend to do this. I think it's very dangerous the amount of power that the DACs have and I think that if you want to have a DAC, one of the criteria should be that they not take on any other litigation work outside of the DAC, so that their future isn't dependent on the insurance companies giving them business later on.

I handed out a letter that I just saw on the desk of one of my associates today. It's from Health Recovery Clinic. This is where the premium dollars are going. This is for a disability assessment; it's a DAC. My client, who has no psychological problems that we're aware of—certainly we're not saying that he has any or is advancing any—has to see a psychiatrist for three and a half hours, then a physiotherapist, then a medical doctor—who I think is an orthopaedic surgeon, but I'm not sure—then a kinesiologist, and again a kinesiologist a different day. This cost, I venture, a minimum of \$5,000 to \$6,000. That's where the premium dollars are going.

I settled a case recently where a psychiatrist put in a 61-page report—61 pages. The average cost of a page is about \$125 to \$175 for a medical report. He then followed it up with seven further reports commenting on various other matters that the lawyer asked him about—an average of three pages each. We've got 85 pages approximately of very boring reading material that's costing the people who pay premiums a fortune. They're trying to stack the deck by putting in as much as they can, thinking volume and weight make some advantage over perhaps quality; and sometimes it does, unfortunately.

I submit that DACs, if they play any role, should play one where the person doing the assessment has no conflict by way of future business, not only in respect to the individual, but in terms of future business from the industry. Secondly, it should be of this nature where the insured is paying for this type of \$6,000 DAC; it should be limited. If you put a cost on the DAC that you're allowed to charge, then the insurance companies won't be complaining as much about how much money they're losing.

Those are my submissions. Are there any questions?

Mr Crozier: I just wanted to have you expand just a little. I suppose no matter what we do, they're going to have people fall through the cracks.

Mr David: Absolutely.

Mr Crozier: This seemed to be initially what you were concerned about. Then you went on to address some other problems. But are there areas of the legislation that you feel you would like to recommend to us that prevent that kind of thing, or was it just a general statement that it'll always be there?

Mr David: There are a number of things. One is, don't let an adjuster arbitrarily decide that they're going to cut somebody off and, by the time you get your DAC report, which may be six months later, find out that maybe he shouldn't have been cut off. By that time, it may be too late. A lot of the family could be broken up by that. I may seem to dramatize it, but unless you've been personally injured—not only a scrape or something for a day or two, a headache for a couple of days, but when you've been suffering, day in, day out, for weeks and weeks, it gets pretty traumatic.

Ms Lankin: Thank you for your presentation. I don't have a specific question. I appreciate some of the issues that you've raised with us. I'm one of those people who has a problem with the issue of tort, but if there's going to be tort, I think you've raised some very important concerns that the government will need to look at.

I also think, if I may say to Mr Sampson, that issues around the independence of DACs and those relationships are important. I don't know the safety mechanisms that are in place now, but those are important things to pursue.

1800

I was wondering if there is any way we might be able to get some information, either through the Ontario Insurance Commission or perhaps from companies directly, about the proportion of their accident benefit or med rehab costs—let me put it that way—that are actually taken up by insurance-company-requested assessments. I know that this is an important part of the

system, but we have heard much from many people about abuse and the costs that are attached to that and that that is a contributing factor to increasing med rehab costs, which the insurance industry identifies as the biggest contributor to increasing premiums. It would be interesting, and if there are no mechanisms to get that, we might consider in legislation the ability to compel that kind of information to be filed, because I think where you have this intersection of publicly mandated insurance and therefore government having a role in trying to define the product to ensure stability in premiums, I'm sure feeling, as a committee member, without sufficient information to be able to judge the accuracy of information presented to us by the industry with respect to the elements going into increasing costs.

The Chair: Could we discuss this at the end of the day in order to avoid taking up Mr David's time?

Ms Lankin: It's just a request that I'm making for information. If it can be met, I think it would be helpful to us; that's all.

Mrs Marland: Mr David, I just want to be very clear. I know I can re-read in Hansard what you just said, but we're not able to get Hansard for some time, so I want to be very clear on this letter that you've given us dated February 1, that what you're saying is that your client was referred to all of these appointments—

Mr David: Yes, will be. February 28, 1996—next week.

Mrs Marland: —was referred for all those appointments by Elaine Ruegg of Liberty Mutual. Mr Clerk, this becomes part of the committee record, doesn't it? But there weren't seemingly any of those kinds of problems with your client? Is that what you said?

Mr David: There's no indication. I asked the lawyer who's in charge if our client has any psychological problems or if we're advancing any, and he said no. There were no psychological problems, so the first person who meets him is a psychologist. The psychologist is there for a very good reason. He's there to say that the client's a malingerer and that he's not bona fide; that's why they want a psychologist.

Mrs Marland: Is it possible that this hierarchy of appointments is established by everyone trying to protect any further suit down the road? "Well, we did look at this victim and everything was fine," so the assessment was made. Because the reason that I'm asking that question is, we've heard from so many representatives of brain-injured victims that a lot of the condition isn't always—I mean, the cognitive ability or the cognitive impairment, whichever way you want to express it, doesn't show up initially or sometimes some of it gets better and sometimes some of it gets worse. So I'm absolutely floored if these appointments are set up without any clinical indications that they're necessary. That's a point that I will pursue with the insurance companies.

Mr David: The psychologist is there to show that he's a malingerer, that he's not bona fide. That's why they put him there. That's my belief.

The others—the physiotherapist, the kinesiologist and the doctor—are there for the function. Normally, kinesiologists work under physiotherapists. Remember, DAC is a very big business; it's a lot of money. I understand that they're charging \$800 just for the administration fee for

setting this up. If you're getting \$6,000—if you can make it three to five days long, then you'll do so. If the insurance company says, "Fine, let's do it, because that way we can stack the deck more," then they're happy also. So they pay and they receive. They're stacking the deck, but is that cost necessary?

One DAC that a client of mine went to said, "Everything's fine." We sent her to an orthopaedic surgeon. She had a frozen shoulder. A frozen shoulder means that your muscles are wasting away. If she doesn't get therapy, it gets worse and then she becomes more likely to be a burden on the public. This was a DAC. Frozen shoulders are not that hard to find and they said that she was able to work. Now, that's one where I was considering suing the DAC for negligence, but of course there were no damages because we discovered the frozen shoulder right away. The physiotherapy centre, rather, where she was going said: "This is ridiculous. This woman has a frozen shoulder." So I said, "Let's get a doctor to send her to an orthopaedic surgeon to verify it," and he did.

The Chair: Thank you, Mr David, for presenting to us today. We certainly appreciate your input.

BARRY BROWN

The Chair: Our next presenter is Barry Brown. Welcome to the committee.

Mr Barry Brown: Thank you for having me. My name is Barry Brown. I'm not a doctor, I'm not a psychologist, I'm not a psychiatrist; I'm a social worker. We work with families. I have a clinic in Toronto. We've been here for 14 years. We work with the families of personal injury victims.

Some years ago, during presentations for the last bill that came through regarding motor vehicle insurance, I presented to the committee my concerns. At that time I wished to relay that unless the family was seen as the victim, rehabilitation efforts would be undermined. It was very clear to me at that time that not only does the victim suffer, but family members suffer as well. There's been significant research into what happens to the spouse of a personal-injury victim and children: clinical depression, the disintegration of families. It was very key to me to be able to relay that the family must be seen as the unit to be treated, to be assisted.

I was assured by the individual sitting in that chair that the family qualified as the insured and that rehabilitation efforts could include the family. I was pleased. I understood that if there was a dispute as to whether or not a family warranted assessment and counselling, the mediation process would be swift and impartial.

These few years later, desperate families on the verge of emotional collapse, where a family member has suffered significant and objective injury—I'm not even talking about soft tissue; I'm saying where things are broken, where people are unconscious—are referred by their doctors and/or treating psychologists and these people are routinely, automatically refused counselling intervention for reasons beyond my understanding.

Today the majority of families that I come across, suffering from emotional upheaval, must regularly wait months to access the mediation process because an adjuster is able simply to say no with little to no logic,

little to no reason. I have asked specifically when I received a no: "Could you please assist me to understand your logic? What are your reasons?" "You have access to the mediation process." "Off the record, what are you seeing in this family that I'm not seeing? I have a medical referral from a physician I don't know from Sunnybrook hospital; both spouses were in the accident. What am I missing?" "You have access to the mediation process." I don't understand.

Chronic pain, head injury and spinal cord injury change people, change them dramatically and negatively, and these people have husbands, wives and children. People, your family member or members, are transferred into disabled and/or angry and/or aimless individuals you can hardly recognize. Certainly, they are people their family hardly recognize. Anger, withdrawal and isolation are common. Without assessment and counselling intervention to help families understand what has happened to them, families disintegrate, leaving no support for the injury victim and undermining rehabilitation efforts.

The family I just spoke of—a husband and wife in a motor vehicle accident, together, T-boned in a car accident, red light, not their fault—are being sent to physio, are being sent for help to address their physical pains. They have soft tissue damage, migraine headache pain for the wife. The family was referred by their physician; I don't know the physician—Sunnybrook hospital.

1810

I met with the family. I sent a letter off to the insurer stating the family's been referred. I'll do a brief assessment and likely a brief treatment. What we found was that they were continuing to address their employment with heightened frustration because they couldn't be who they were; the pain was distracting; migraine pain, shoulder pain, neck pain, back pain. They would manage their employment and they would come home and vent on each other.

They were coming home for respite, for solace, and they found instead their spouse in as much of a mess: lower tolerance levels for frustration, venting upon one another, heightening stress, heightening agitation, heightening frustration, heightening pain, withdrawal and a collapsing of their relationship. They didn't understand what was happening to them. It was a simple process. They needed a number of sessions to help them understand what happens to people in a car accident. Yes, you look the same, but you're not the same. You're getting help and it will take time.

The family was educated. The couple were educated. They were helped to address their frustrations and pain in a more purposeful fashion. They were helped to be supportive of each other, even when they had less energy. That's a solid marriage again.

A brief report was sent off to the adjuster, who simply said: "No. Not addressing it. Won't cover it." "Just a why?" "No why." I don't understand.

Another family, 17 years of marriage, 17 years of working, this couple, 14-year-old daughter, an adored child, contributing citizens—she has a car accident; she's unconscious for three days. She broke a number of bones. This is not a "maybe"; this is for sure. She can't work. She takes pride in her ability to interact in society in a

gainful fashion. She starts gaining weight, she despises that and she's ashamed. She's in a lot of pain. She's withdrawn from family; she's withdrawn from friends. She's not out in the world any more.

This is an upset, pained and angry lady. Her daughter goes to work, her husband goes to work, they come home and she vents her frustration on them. She's not going to yell at a tree or at a wall, she yells at them. After approximately two years—I hadn't seen this family yet—her agitation and her frustration, her stress level and her pain level were of such intensity that on one occasion, with little provocation she lashed out against her daughter, damaged her, bruised her. The school called the children's aid society, the children's aid society and the police attended at the home. The mother was arrested and the child was taken away.

We were referred this family. The child is now back with the mother. The mother was charged, found guilty and is presently on probation. I contacted the insurer and I explained my understanding of the circumstances. The adjuster said: "Wait. We're waiting for an IME. We don't want to authorize family counselling; we're waiting for an IME."

This child is devastated and the husband watched this happen. This mother is emotionally destroyed. What in the world is an IME going to do for this family? An IME will likely, in this case, be conducted by a physician, presumably an orthopaedic surgeon, a bones individual. This family is emotionally eroding. "Wait. Don't help them yet." This is absurd. The adjuster can say, "Wait," because they can say, "Wait." They can say no because they have that power. I don't understand. I asked, "Wait for what?" This was an adored kid. There was no police history prior; there's no history of CAS involvement prior. These were contributing citizens. These were normal people. I don't understand.

Families must be seen as the victim and counselling must be made available, with proper assessment to determine if the damage in the family is resultant of the injuries. This must be offered without constant and regular obstruction. Families are central to our society and they must be protected and they must be supported.

Regarding this new legislation, in general I support it. However, I do have some concerns. My first concern is, as you might have guessed, that there must be some safeguard to protect against the automatic gamesaying of no. I'm not a legislator, I'm not a lawyer; I work with unhappy families. I sometimes joke that they call my practice Misery 'R' Us, but their misery is real. If a family has a right to assistance, it should be there.

I have a concern in this proposed legislation regarding the 30-day notification. A family, following a personal injury, will be in the stage of hope. Everyone draws together, they're focused or they're praying; they won't know what they're looking to down the road. They can't apply for family assistance as they rally around the victim. That won't come out for at least a year.

DACs are, as I understand, for the most part taking the place of the mediation process—an employer—to ensure that DACs are aware of what a personal injury can do to a family, and a family expert will be on the DAC a family is sent to. There is no point in addressing a family

matter with an orthopaedic surgeon. The family must be seen as the victim. If you want to rehabilitate your victim, help the family understand what has happened.

Third, in the case of death, as I understand the proposed legislation, there isn't a component that allows for counselling to assist the family to understand what has happened with the loss of a family member, to help them grieve, to help them restructure, to help them regroup and carry on. It's responsible and it's moral that counselling is also offered in the case of death.

I had a stack of files on my desk that I wanted to address with regard to this presentation but I figured being succinct would probably be more purposeful. I will leave my presentation with a little bit of redundancy. If you want to assist a personal injury victim, if you want to bring a personal injury victim back into society, you must see the victim as the family, the family as the victim. Make help available without undue stress. Thank you.

Ms Lankin: Thank you very much. You have brought an issue to us. This is the first time in these hearings that this issue has been raised and is one in which, as I listened to you speak, it's so obvious and so easy to understand the need that you describe.

Yet, I can imagine the response in terms of some of the insurance companies. I had a bit of an experience when I was in the Health portfolio. In this case, it had to do with treatment for addictions and the development of an understanding of co-dependency and treatment of co-dependents, family members, around that and huge costs all of a sudden coming into the system with this new understanding. It seemed very reasonable, then all of a sudden we realized there was also a business being run here; in many cases these were referrals to US clinics that were making money off the Ontario health care system.

Every time you start to understand a problem and start to peel the layers from the onion, new problems come out around it. That's not a reason for us not to address the problem you raise, but I guess what we're seeing is the response from the insurance industry, worried that this somehow is a new trend or a new cost.

I'd be interested if you have any insight into why they're so hard line on this, though. It doesn't seem to me easily to be an area that is going to be exploited. Why would families put themselves through going to counselling if it wasn't necessary and/or related to the events they were experiencing? There is still such a stigma in our society that many people would avoid that. I can't see it as an area for potential abuse, but I'm wondering why the insurance companies are seeing it that way.

1820
Mr Barry Brown: One, they can if they choose. Two, more poignantly, they don't understand. It's a lack of education. And three, there is a lack of understanding that to have a family on board, to have a family understand, will allow rehabilitation efforts to proceed with greater efficiency.

There is just a lack of knowledge, I think. I don't think insurance adjusters are out there to undermine people or families. There is an awareness, I think, within the adjusters' community that too many are fakes, but as you point out, who is going to come to family counselling to get a few extra bucks?

As I was stating, I don't understand why they say no, and sometimes with so many obvious indicators illustrating a family is disintegrating, when the law says they have a right to help. The bottom line I guess is I don't know. Education, I hope.

Mr Spina: Thank you, Mr Brown. As Frances indicated, it is the first presentation from your particular viewpoint and it's a welcome one, an interesting one. I wondered if some of the DACs, some of the processes—Mr David brought it up in the last presentation where there was a psychologist who was part of that particular DAC team, and Mr David indicated that, in his opinion, that was to determine whether the victim was malingering or not, but I'm wondering if that element of the DAC, a psychologist, would be able to recognize the social changes that take place in that person's psyche and refer them to you. Is that not happening?

Mr Barry Brown: A psychiatrist, as I understand, for the most part is trained to look to the individual, past-related issues that are having negative ramifications in the present. Psychology has a great strength in testing and determining personality profiles, of putting together treatment programs for that particular personality profile. If a psychiatrist or a psychologist is, one, trained to deal with families, and two, has a mandate to look, those individuals can be invaluable, if they're looking.

I'm a social worker. My area of expertise and where we focus in my clinic is the family. That psychologist may have been of monumental assistance if he/she was looking for more than just how was that individual functioning, personalitywise. I think for the most part the rehabilitation community does not look to family as a focus. When you walk into your doctor's office and your arm is broken, your doctor is going to look and address the issue and will rarely ask, "How are things going at home?" You can be fit to explode with frustration, but if you're walking with a broken arm, that's what's going to be addressed. As I say, the helping professionals for the most part focus on the injury victim, with little awareness of what's happening outside of the specific injury, unaware of the relevance of the emotional ramification to the family and from the family on to the victim.

Mr Spina: So how specifically do you think we should address this?

Mr Barry Brown: If family is important in our society, and it is, and if you want to responsibly address rehabilitation, the matter of family is important to be put front and central to the helping professionals. I've spoken to numerous, numerous rehabilitation facilities and they ask me: "How do you find out? We're not social workers. We're not therapists. How do you find out if a family is doing okay or not?" I say, "There's a very unique process. It takes a lot of training, but I think I could teach you. You say, 'How are things going at home?' At times you'll hear, 'Not bad, thanks; it's stressful but we're managing,' and other times you'll get a torrent. They'll start crying and flailing," not flailing necessarily, but at times. "Ask." "But we don't." We do.

Mr Kwinter: Thank you very much for your presentation. I find it interesting. I think somewhere or other we have to step back.

You were saying one of the things that you were concerned about with the DAC is that if the family appeared, they may be confronted by an orthopaedic surgeon as opposed to someone who can deal—you felt that someone on the DAC should be a social worker, someone who could deal with the family.

My concern is that from what you are saying, in most cases the family wouldn't even be referred to a DAC. The insurance company would be looking at the particular person who had an accident, would be addressing, as you say, if it's a matter of a skeletal injury or a soft-tissue injury and send them for that, but they wouldn't get the family there. I think the big problem is, how do you identify that at that stage, at the stage when they're going to the DAC, and how do you get the awareness to the point where the insurers will in fact take that into consideration?

Mr Barry Brown: I guess the last part is the most important. Myself and my staff speak to different groups as regularly as we can with regard to identification. I identify to the adjuster the problem. "You'd have to be blind to miss this particular problem regarding that particular family." "Police and children's aid for this family? This is horrendous." The adjuster said, "She's going to be DACed March 3rd or 4th," in a letter. I've written a letter in response noting that I hope that whoever is DACing this woman will address my concern for this family. We'll see what we hear in response, but I really doubt it.

The public doesn't know that the family suffers and that family matters in rehab, and insurance adjusters don't know. We're doing what we can to educate. As a number of you have pointed out, I am the first one who has spoken on family, and it's a sad state of affairs when after how many days, three days, I'm the first one. But I'm glad I'm one. It's important.

I don't know how to share this very important information with those who are in control. I'm not a legislator. We work with families. We do what we can to help those that come through our door. Even those that come through our door we can't help at times. I think it's immoral that that is possible.

The Chair: Thank you for your presentation, Mr Brown. We appreciate your perspective on our deliberations.

The only outstanding piece of business is a request for further information from Miss Lankin. Is there any discussion, or is there general agreement on the cost of DAC, I think, the cost of assessments?

Ms Lankin: Yes. I'm just requesting this as an individual member of the committee. If it is possible, I think the information will be helpful for the committee, if it's understood.

Mr Sampson: Do you want to clarify what it is you're looking for?

Ms Lankin: What I'm asking for?

Mr Sampson: Yes, because if it is what I think you're looking for, you're going to find it difficult to find. But we can ask.

Ms Lankin: Yes. I'm sure it's going to be difficult to find. What I have been hearing is the insurance industry saying that under Bill 164, and even previously, the trend of the fastest area of increased cost is for medical rehab cost, and the response that they ask for from government is to reduce benefits in that area and to put tighter gatekeeping controls in. We all recognize that there are some issues there that need to be dealt with to have more efficient use of these resources, but we hear from others coming forward who have had experience, either representing as advocates on behalf of accident victims or accident victims themselves, their perception, at least, of an extraordinary amount of resource going into assessments and reassessments and second and third opinions. At some point, it would be interesting to try and get at how much of that is helpful in terms of the gatekeeping role versus how much of it is actually contributing to the pressure in increasing costs in medical rehab and therefore pressuring higher premiums.

I suspect that that information is not easily available in the public domain. It would be interesting to try and get the insurance companies—even if it's not in the context of this draft legislation but as you set up your task force and you work through these issues—to get a more honest assessment of that, because it strikes me that the balance that you eventually want to reach in that area really needs to be informed also by this behaviour of claims management, excessive claims management, that we're hearing about.

The Chair: This request for information is from the insurance industry, not necessarily from our research staff?

Ms Lankin: If it's available. Anything like that that is available through the Ontario Insurance Commission or whatever, our legislative research staff might be able to access that. I guess I'm also asking perhaps if Mr Sampson might be able through his ministry officials to request the insurance industry to respond to some of these matters. It may not be possible to get the information, but it is an important missing piece, I think, in trying to get to the bottom of this.

Mr Wettlaufer: I think the information might be available from the Insurance Bureau of Canada. They gave us figures today or yesterday, that case management costs have risen by 40% to 50%. If they've broken that down, they may also have these figures.

The Chair: Without any objection then, I would ask our research staff to see if they could track down some of this information.

Ms Lankin: Okay. Thank you.

The Chair: There being no further business to bring before the committee, we stand adjourned until tomorrow morning at 9:20.

The committee adjourned at 1831.

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Silipo, Tony (Dovercourt ND)

*Spina, Joseph (Brampton North / -Nord PC)

*Wettlaufer, Wayne (Kitchener PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Crozier, Bruce (Essex South / -Sud L) for Mr Phillips

Kormos, Peter (Welland-Thorold ND) for Mr Silipo

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

Clerk / Greffier: Franco Carrozza

Staff / Personnel: Andrew McNaught, research officer, Legislative Research Service

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First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Thursday 22 February 1996

Journal des débats (Hansard)

Jeudi 22 février 1996

**Standing committee on
finance and economic affairs**

**Comité permanent des finances
et des affaires économiques**

Auto insurance

Assurance-automobile



Chair: Ted Chudleigh
Clerk: Franco Carrozza

Président : Ted Chudleigh
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Thursday 22 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 22 février 1996

The committee met at 0922 in room 151.

AUTO INSURANCE
ONTARIO MEDICAL ASSOCIATION

The Chair (Mr Ted Chudleigh): Welcome to our last day of hearings at Queen's Park. This morning we have the Ontario Medical Association joining us. Welcome to the committee, gentlemen. We have 20 minutes together, if you would like to present your brief, and we could use any remaining time for questions.

Mr John Krauser: Thank you. I'm John Krauser. I'm on the staff of the Ontario Medical Association. With me is Dr Ted Boardway, who is director of the health policy department, and Mr Jim Tsitanidis, who is with our department of economics.

Mrs Margaret Marland (Mississauga South): I'm sorry. I didn't get the last name.

Mr Krauser: Tsitanidis. Starts with a "T."

The brief has been circulated to you, I hope. We passed it in on Tuesday. It's made up of three sections. The first section has specific recommendations, and I'll go through that. The other two sections are more general, and some questions in the third section which—I'll just simply highlight the latter two.

The first recommendation under "Description of medical benefit" in the regulations, we suggest that you add the word "psychiatric" to the words "medical" and "surgical." I appreciate that perhaps psychiatric was part of medical and historically has been, but there is concern out there that if psychiatry isn't specifically recognized, there may be some question about psychiatric benefits.

The second recommendation is on the same page, page 19 of the accident benefit regulations. There is the provision that, "The insurer is not liable to pay a medical benefit for goods and services that are experimental in nature." We'd like to recommend that you define the term "experimental," and there are two reasons for that.

Number one, in the field of cancer, a tremendous amount of the improvement in cancer care has come as a result of clinical trials and enrolling patients in clinical trials, and we would suggest that perhaps the same paradigm works for rehabilitation. In other words, when you've exhausted your first-line and second-line effort at helping somebody return to normal function, enrolment in a clinical trial at that point can be access to the best care. So we would suggest that the insurance coverage for everybody cover care provided in the context of formal approved clinical trials.

The second reason for defining the term "experimental" really arises out of the extended health care field and my experience with it. There you often find the insurers

using the term "experimental" to discount treatment for a patient that looks somewhat unorthodox. What often is going on is that the physician is providing the patient a highly individualized course of treatment, it's a hard case, and while on the surface it may look unorthodox, in fact it's highly individualized medical care. We wouldn't want to see the auto insurers using the term "experimental" to discount that kind of situation, and we think you can get at it if you just try to define the term "experimental." We think some of the language in the submission will give you some of the concepts that you can use to exempt those two areas.

The third recommendation has to do with the duty that's imposed on the insured to seek return to work and to participate in rehabilitation. From our work on return to work, we no longer think you can just simply address the patient in this area. You really have to address the employment setting in terms of time to return to work and the capacity of the employment setting to accommodate. We would recommend that you find a way to recognize that employers have a duty to cooperate, as well, by providing timely and safe return-to-work programs for the disabled employees, and we would suggest to you that if you would like to see what business can do for business in helping the work site improve their skills, you might want to look at the Washington Business Group On Health, and I can give you information about what they do to help educate employers on how to comply with the Americans with Disabilities Act.

The next recommendation, 1.4, relates to the portion of the bill where you're proposing to assess some of the health care costs to insurers, and we assume you're talking about physician, ambulance and hospital costs and acute care portion. We would like to just suggest that an alternative might be to have physicians bill the insurers directly. I think it's premature to recommend you move in that direction, because there's a fair bit of exploration that one would have to do to know whether that would be a convenient and feasible way to do business, but nevertheless, we'd like to at least put it in front of you for your consideration.

Our recommendation, because we don't quite know where you're going on this, is that before you proclaim the legislation there be a meeting between the OMA, the OIC, the Ministry of Health and auto insurers on how physicians will bill for their services under the new legislation. So we're asking you to give us an opportunity to have that kind of a meeting before the legislation is proclaimed.

In 1.5, we're making reference to the treatment plan provisions. You've defined a treatment plan, and as far as I can tell, you're requiring the written treatment plan in

the case of all applications for benefits. We disagree with that. We looked into this area over the last year or so and the rubric that comes up is individualized written rehabilitation plans, and our feeling was that these plans do make a contribution to coordination of care, they are valuable, but they have limited use in complex cases, and we think those types of situations should be defined by the health professionals in the field for the insurer, but requiring written plans in all cases is too much. We would suggest—I think the word “shall” is used in reference to these plans—you might want to consider “may” and then allow the field to develop some criteria on when they would add value.

The second point about treatment plans is the cost requirement to cost out things. We honestly don't think, as written, with the cost requirement that you've given physicians a doable task. There are two reasons for that. Number one, the course of treatment and the response to treatment is open-ended and it's not always easy to predict. Secondly, where a physician is dealing with multiple impairments with different systems involving different practitioners, we don't think it's practical to require a physician to cost all of that out in advance of the benefit. So we don't think physicians can comply with this part of the legislation, as written. They don't have the information; they don't have the data.

0930

The next, 1.7—there's a provision to allow chiropractors and physios to do some physical therapy in advance of the treatment plan being approved. That's in subsection 42(6) of the benefit regulation. A number of physicians, family doctors, take great pride in being able to provide manipulation to their patients, and they would certainly want us to ask you to include physicians in that section along with chiropractors and physios. That is our recommendation.

In 1.8 of our submission, the 21-day requirement to provide information to an insured person for, I believe, the DAC but also for insurers, has the potential to put physicians in a very difficult position. You may know that physicians have an obligation to cooperate by providing information under their regulatory body. The potential of patients coming in three, four or five days before the 21 days are up in a panic asking physicians to fill out the forms and send them along can cause an awful lot of difficulty and bad feeling. What we recommend is that the legislation identify a fixed start point for the 21 days, such that the physician will have the benefit of all 21 days in which to prepare the information requested. I don't know how to do that, but that's our recommendation.

The next section is general recommendations, and there are only two. We think they're all worthy of your consideration. We don't know how to translate them into legislative changes but I'd bring two to your attention. In 2.4, we suggest you look at the Ontario Trauma Registry. It's funded by the Ministry of Health. It collects admission data on all accidental injuries or a good number of accidental injuries in the province, including motor vehicle accidents, but they also provide a mechanism to do an assessment of the severity of disability. What I think you might consider doing is either building into the premium

structure—probably there are other alternatives—some money to enhance the capacity of the Ontario Trauma Registry to do more of that kind of development of data, particularly data around the nature of injuries and also the level of disability, that you find some money to enhance their capacity to provide this kind of data in Ontario. They do a six-month follow-up so that you can see what in fact rehabilitation is accomplished. They could do a year follow-up. We think it has significant potential, and they'd be interested in that kind of proposition. So it would provide everybody with data on the nature of vehicle accident, impairment and trauma in the province.

The second recommendation that I would mention to you is 2.7. I've not been able to figure out—and maybe it will be clearer under the future legislation—some principle by which I could advise physicians on when to stop billing OHIP and when to start billing insurers. Perhaps I just simply am not part of the day-to-day system. Maybe the system works that out quite easily, and I just don't know about it. But I'd ask you to take a look at that. The language for medically necessary and insured is a medically necessary service. The language in the legislation is reasonable and necessary. I think it would be helpful if you could clarify the transition point, especially if you don't do anything else about physician direct billing to insurers.

The questions that we would ask you to try and provide some information on are on the last page, and I won't go over those. They're self explanatory, I hope.

That would complete our submission. If we can answer some questions, we'd be pleased to do so.

Mr Bruce Crozier (Essex South): Good morning, gentlemen. My question doesn't relate to what's in your brief, although we're interested in reading that in detail. It goes to a concern that's come up during these hearings, and that is with conflict of interest: doctors having a financial interest in rehab centres and referring to those rehab centres which they may have a financial interest in. I would like your opinion as to how the OMA feels about that, and what they might do then to help us define tighter guidelines under conflict of interest.

Dr Ted Boadway: This is always a problem when anyone can make a referral to their own work, so it is a problem that you have to think about with chiropractors, physiotherapists and physicians.

Mr Crozier: Certainly. I'm asking your opinion, but it goes to the whole field.

Dr Boadway: Each profession has their own rehab centres that they run and operate. It is a problem. It's also a larger problem when you get to—if I refer to my own services to do surgical work, in a way it's self-referral, and so it's always a problem we have to be cognizant of in professional endeavour.

I think there are two things. First of all, I think under this circumstance the insurers are going to have an excellent and appropriate management role in case-managing patients' work. So it's not going to be an absolutely free hand for anyone who would like to just do what they want. Secondly, I think that as a profession we have to continue to look very hard at our own work and look at the professional guidelines for areas where we refer to ourselves. As you know, that work is undergoing

extensive work at the present time; it's developing day by day. But I don't have a magic answer for you.

Mr Krauser: There are guidelines from the college on the subject.

Mr Crozier: There are? Okay.

A further problem, it seems, and still in the area of conflict of interest, is that a number of medical practitioners do insurance exams; in other words, they're paid by the insurance company to do various kinds of insurance examinations. The same medical practitioners may also be in the area of DACs, the designated assessment centres, passing judgement on claimants who are being assessed, and that must be a difficult job too, to kind of separate the two. In one case, you're passing judgement on claims that an insurance company may be disputing, and on the other hand doing a number of medical examinations for the insurance company. Is that an area of conflict as well that you have dealt with?

Dr Boadway: Whenever physicians work under the employ of someone, whether it's for the lawyer for one side or the lawyer for the other side, or for a company for one side or a company for the other, the relationship between the physician and the patient and the paying agency has changed. It's not the one you usually face when a person comes into the office for a regular visit.

The only advantage you have there is that, generally speaking, everybody knows who's paying who. It's clear to the patient that the doctor's being paid by someone else; it's clear to their lawyer that the doctor's being paid by someone else. We know that these result in some very sticky situations, with lawyers getting doctors who they think will line up with their positions, and companies doing the same. It's not nice to contemplate that kind of thing, but the fact is, it happens. The only real benefit is that everybody knows who's paying who, and that helps sort it out.

Ms Frances Lankin (Beaches-Woodbine): Ted, with respect to the point you just made about ongoing work being done in the area of conflict and self-referrals etc, are you speaking within the college or within the OMA? I'm not aware of it; tell us a bit about that.

Mr Krauser: There are conflict-of-interest guidelines in the college material; been there for a long time. We've spent a fair amount of work; we have to extrapolate from it, but we've spent a fair amount of time thinking about the relationship between physicians and pharmaceutical companies. The principle we came to there was full disclosure. If you are comfortable telling the patient who is paying you and what interests you have, that's a sign that maybe something is askew; so full disclosure rather than forbidding—full disclosure was our principle.

Ms Lankin: There's been a fair bit of discussion about this during the first three days of the hearings. It has been raised, there have been articles provided to the committee which have raised concerns, and it's around multiple practitioners, not just physicians but in fact it seems to be more prevalent that it would be a physician-owned clinic where the study has been done. That doesn't mean that's where it happens most often, but that's just where people looked at it. It would be helpful, if there is work that is going on in the college or in your association or there is other material, for you to provide that to the committee,

because the view of it that is emerging is that it's a very large area and one in which the government needs to start to take some action. So it would be helpful to have your input.

0940

Dr Boadway: I'm aware of the tremendous amount of flak that's being raised in this subject. It's just sort of risen up just recently. Really, I think what we're dealing with here is a conflict of several commercial interests, when you look at it, and when commercial interests start looking at it, they're quite able to call the other pot soiled without even disclosing they have their own pot.

Ms Lankin: Yes, I realize that.

Dr Boadway: It's quite seamy, actually, so I don't know where the truth is in some of these charges. I'm worried that there may be a germ of truth in some of it, but certainly the flak that's around right now, you have to be very careful who you listen to.

Ms Lankin: I understand that and that's why I'm suggesting that if there is any work that's been done or any of this that has been examined—a few years ago it was an issue around physicians owning laboratories.

Dr Boadway: That's right.

Mrs Marland: I have two questions and the first one I want to preface by telling you that I am married to a general practitioner in dentistry, so it's not that I don't understand specialties and the professions. But I am interested in what you're suggesting in 1.7 about including physicians, that they be added along with physiotherapists and chiropractors in subsection 42(6). We have a lot of very close friends who are physicians, and I would like to ask you if you think that physicians have the same training that chiropractors have.

I know we have this age-long debate about who does what, but I would ask you the question quite respectfully, because chiropractors go to school for six years to learn one thing and general practitioners in medicine go to school for the same number of years and have to learn a whole lot of things. So I guess I have some reservations in that suggestion that you have under 1.7 in terms of the specialized treatment that is being rendered, because I know GPs who will not do certain things because they don't feel they've had the training for it, whether it's in medicine or dentistry.

Dr Boadway: I'll start and then I think John'll pick it up. First of all, chiropractors, physiotherapists and physicians do manipulation and not one of the three professions is trained the same. You don't have to come through the same training route to be able to do something well. You can learn it. Just like dentists and physicians have significant overlap in what they do and both do it well, they come by a very different route.

Secondly, at the present time, family doctors and orthopaedic surgeons do an extensive amount of manipulation. Orthopaedic surgeons are trained for about 13 years and they do manipulation on a daily basis.

Mrs Marland: I wasn't talking about orthopaedic surgeons.

Dr Boadway: They're included in physicians. And then we have a very well-trained cadre of family doctors who have taken extensive training beyond their regular training, who actually do a lot of manipulation on a

regular basis and are referred to by other family doctors to do manipulation.

Mrs Marland: Right. Excuse me interrupting you, but you're not putting any addendum to what kind of experience those physicians have to have. The physicians that you're describing now obviously do have the expertise and the specialized additional training; I'm talking about just putting in physicians, blanket.

Dr Boadway: The model you would choose is the one already chosen by the Legislature, which is the Regulated Health Professions Act. In the Regulated Health Professions Act, this was very extensively canvassed over a period of a couple of years.

Ms Lankin: Very extensively.

Dr Boadway: And not just during the time of your government, I might add.

Ms Lankin: Eight ministers of Health.

Dr Boadway: Eight ministers of Health. This came up with practically every Minister of Health over many governments. As a result of that, the RHPA recognizes that physicians may do manipulation, and that's without limit. The reason it was recognized is because physicians in fact have very stringent limits; that is, under that act I could do thoracic surgery. I'm clearly not competent to do so, and the reason I'm not is because there is a very excellent control system that prevents me from doing that through the College of Physicians and Surgeons. So it was decided not to duplicate or re-duplicate a control mechanism already functioning well in place.

So in the RHPA, manipulation is granted already to all physicians, but it's clear from that that only a small minority of our physicians practise it. They practise it in their zone of confidence and competence, and that would be true here. So I think if you limit it here, you're doing something that's already been recognized by the Legislature as appropriate.

The Chair: We appreciate the Ontario Medical Association's input into our deliberations. Thank you very much for joining us this morning.

DISPUTE RESOLUTION SERVICES

The Chair: We now have Dispute Resolution Services joining us, Mr Hendler. Welcome to the committee.

Mr Cliff Hendler: Good morning, respected Chair and committee members. Please accept my thanks for allowing me the opportunity of addressing you this morning.

By way of brief background, my name is Cliff Hendler and I am the president of Dispute Resolution Services, an alternative dispute resolution firm which specializes in the area of insurance mediation and arbitration. My personal background is that I have been involved in the resolution of insurance disputes for the past 21 years, the first 15 years of which were involved in the insurance side as a claims adjuster, manager and auditor, and for the past six years I've been involved primarily as the mediator of personal injury lawsuits. I've been appointed as mediator in over 1,000 cases and I've seen successful resolution of more than 90% of those cases.

To my left is my associate Bruce Robinson, a lawyer and arbitrator with 22 years' experience in the handling of insurance litigation, with an emphasis in the field of

personal injury matters. Prior to joining our firm, Mr Robinson was an arbitrator at the Ontario Insurance Commission.

My high commendations to you and to the others involved in the proposed changes towards an ever-increasing usage of ADR in the resolution of accident benefit as well as tort cases. My brief comments to you this morning relate to these proposed ADR changes and in particular the use of private sector mediators, arbitrators, as well as the new role of the neutral evaluator.

While the proposed legislation contains significant references to the use of private arbitrators, it is silent on the use of private sector mediators. During the course of the past couple of years, and in vastly increasing numbers over these past few months, there has been an increasing amount of disputed claims which might ordinarily have been referred to the Ontario Insurance Commission but instead have been referred to our office in search of private sector mediators. These cases are usually the ones where the issues are complex and multiple, with the exposure being both for accident benefits as well as on the tort side.

One of the main tenets of ADR is that the parties to the dispute have the ability to choose their neutral third party in whom they have faith to listen and assist in the resolution of their matters. Whether it is a binding or a non-binding process, the ability to choose the neutral goes to the very heart of what alternative dispute resolution is all about.

During the past five years at the Ontario Insurance Commission and for the past couple of years at the court-annexed ADR program, the complaints made by those who have been dissatisfied with the process have by and large been related to the choice of the neutral who has been thrust upon them. This complaint may not necessarily be due to the competency of the neutral but rather to his or her ability to understand the substantive matters underneath the dispute, or perhaps the ability of that person to get along and to help the parties in their resolution of the claim.

I have been known to say on many occasions in the past few years that Ontario has become one of the most sophisticated ADR markets in North America. By this I mean that when counsel or insurers propose matters for private sector mediation, they don't simply ask for any mediator, they want a specific mediator; someone who they believe will be able to provide them with the type of process and knowledge that they believe is important to the resolution of the dispute.

The proposed addition of the neutral evaluation stage to the ADR process carries with it the same logic and philosophy. Section 280.1 states that in the event of a failed mediation, the mediator or the parties jointly may "refer the issues in dispute to a person appointed by the director for an evaluation...."

0950

When we are again looking at a non-binding process where parties are being encouraged to come to their own negotiated settlement, it is absolutely essential that the parties have faith and trust in the neutrals' knowledge and ability to guide them wisely. This ability to choose your neutrals continues with the government's philosophy of

putting the dispute process back in the hands of the parties themselves.

In this regard I propose that section 280.1 be amended to read as follows:

“Neutral evaluator

“280.1(1) If mediation fails, the parties jointly or in conjunction with the mediator, for the purposes of assisting in the resolution of the issues in dispute, may refer the issues in dispute to a neutral evaluator who shall be a person chosen by the parties to assist in determining the probable outcome of a proceeding in court or an arbitration under section 282.

“(2) In the event that the parties cannot jointly agree on the appointed neutral evaluator, each party shall name their own choice who will in turn be called upon to come to an agreed neutral evaluator as between themselves. In the event there still is no agreement, the mediator who initially was involved in the case shall be called upon to provide the final choice of neutral evaluator.”

In respect of the inclusion of private mediations under the proposed legislation, only minimal changes need be required. For example, subsection 280(8) would be modified to read as follows:

“If mediation fails, either privately or under the act...”

This language would be followed in other sections as appropriate.

In closing, may I again commend the government for the choice in moving towards a higher factor of ADR usage. I believe that with the proposed change, as we set out above, the entire dispute resolution process will be reflective of the government's goals, and most importantly, of the needs of the disputants involved in the dispute.

Ms Lankin: I only have a couple of very quick questions. You'll forgive me, I'm not very knowledgeable about this area of the insurance world. My most obvious parallel is my experience in the world of labour arbitrations, both interest arbitrations and rights arbitrations, so I'm quite familiar with the process of selecting nominees to a panel and nominees working to select arbitrators.

In this case, is there a list of approved neutral evaluators? Is that somehow set out through the commission so that you know out there who's got the expertise and whom to draw from, or is it just who's been around and who's got a reputation?

Mr Hendler: In the Ontario Insurance Commission, you get whoever is chosen; whoever is next on the list would be given that case, either in mediation or in arbitration. In the private sector, people will go to a firm such as ours or others to choose, either for a specific mediator or perhaps for a company or for a retired judge, but it's very much driven by people looking for a specific person and that's only available, to my understanding, in the private sector.

Ms Lankin: So there isn't sort of a set of courses or a qualification or anything that acknowledges you as a person in this field.

Mr Hendler: Right. Throughout North America there is no governing body that regulates mediators or arbitrators. It's very much a market-driven force. The proposed recommendation is that our mediators take 40 hours' worth of training. Mediation, being a non-binding process, is only successful if the mediator, him or herself, is

successful and has the ability to get the parties together. The market determines who's good and who's not, who's hired and who's not.

Ms Lankin: Forgive me, but I sort of see the possibility for all sorts of problems, but if they don't exist I don't need to raise them at this point in time.

Mr Hendler: Thanks.

Ms Lankin: Let me just ask you then with respect to your proposal and the process for the parties if they can't agree to a neutral evaluator, appointing individuals who would then try to agree. Failing that, the mediator would choose the person. Are you recommending any time limits be set in? Again, my familiarity with pieces of legislation that have similar processes has time frames set out for setting out names and responding.

Mr Bruce Robinson: If I might respond to that, the time frames are important and we didn't specifically put that in because in the private process things happen very quickly, and usually if somebody says today, “I'm not going to make a decision,” the person on the other side is going to jump up and down and we're going to say, “You have to.” But at that point, on a private basis, it has to come back to the government. I would suggest that the time frames they have now are too long, so it's going to have to come from the government. I don't know what it's going to be though. It no longer becomes a private matter. It's going to be back in the public sector and you've got time frames there. If you choose mediation, arbitration, through the OIC, there is a process in place.

Ms Lankin: Right, I understand.

Mr Robinson: Privately, it's different, so we really can't comment on that.

Ms Lankin: Okay, thank you very much.

Mr Rob Sampson (Mississauga West): Thank you for your presentation this morning. This is clearly an area where we spent a considerable amount of time because we felt that if we tried to speed up the process, it would help everybody involved in the claim. Frankly, that's why we didn't have the option for the private mediation process. We had some concern there might be hopping back and forth between the private and the OIC sector, and that would cause some confusion. Can you comment on that?

Mr Hendler: My comment would be that the private sector mediation has been so successful in the past five years that we really don't have that kind of concern. More than 90% of cases we're seeing right now are resolving. The only way to really address your concern, Mr Sampson, would be to have people choose the path they're going to take. They may choose to go the private route; they may choose to go through the OIC; they may choose to go through the litigation process. We haven't seen in the past parties hopping back and forth and I don't anticipate that there will be any increase in that area whatsoever.

Mr Sampson: The reason we liked the private route for at least one of the levels was it would provide some competition from the private sector. People would be able to justify the cost in both the forums and hopefully that would keep some of the cost levels down. Can you comment on what the relative cost is between what happens at the OIC currently and what happens in the

private sector and whether you think there's a cost advantage in the private route?

Mr Robinson: I don't know what the cost would be per individual case at the OIC to run it through. Through our organization, a half-day or a full-day hearing can be done very expeditiously; a quicker time frame than running through the OIC, which of course saves everybody time—the lawyers on both side—and if there's a settlement, the money is into the hands of the injured accident victim far quicker. So there's a saving there which isn't really dollars and cents. The private ADR systems do not have the overhead and the great support staff that the government agency has, so I think we're running a little leaner.

Mr Sampson: I guess they might have the overhead, but they don't charge it out unless there's some service being provided is the way it works, isn't it?

Mr Robinson: The other thing we have to look at is that the marketplace is not going to give us business if it's not cost-effective to them. Nobody's going to come to us if we can't compete. That's the bottom line.

The other thing that's important about the ADR process is that we can handle multiple claimants on multiple issues. We might have three people who have been injured in an accident. They can come to us in one day and do their tort, get that settled, the generals and specials, plus resolve their accident benefits. Running through the process which is presently in place, they're going to be in the court system for their tort, and may be in the OIC. You've got a lawyer going to one place, you have a lawyer going to another place, and you're going to get two different decisions spaced out over a different period of time. With this, we can handle it all. The mandate of the OIC is restricted to a very small area, but with ADR we can handle all the issues. I think that's very important. That's something we need to bear in mind.

Mr Sampson: Sort of a one-stop-shopping type of approach.

Mr Robinson: It's one stop, it's effective and it works.

Mr Sampson: Can you comment on what you believe to be the value of the neutral evaluation? We've had some comment, albeit from the legal community, that the neutral evaluation process is just another process but not going to be terribly effective. What's your view?

Mr Robinson: I have come from the legal community, having been in litigation many years, and I must admit I was somewhat sceptical when this first came to the forefront back in the mid-1980s. As time went on, towards the end of the 1980s and into the 1990s, I got into this with both feet, because I see it as a fantastic way to get things resolved, not just car accident cases but we've seen it in the labour area.

It's amazing how you bring a neutral person in and the whole complexity that was there shifts down. It's easier to deal with. People see where they're going. You need somebody to come in who's neutral. You don't necessarily need a lawyer, you don't necessarily need a doctor; you need a neutral person who's unbiased, who can help streamline the people in looking at what they want to achieve, what are the interests, as opposed to their

positions. You have two people butting their heads with positions, but what do they want at the end of the day? What are they going to be happy with? That's where the neutral comes in; that's where the arbitrator or mediator helps. I think that's very important.

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Mr Hendler: My concern about having the step of the neutral evaluator is that it turns out to be another step along the process which might tend to water down the other processes. When pre-trials first began they were very effective, because people used the pre-trial stage to get the case settled. Now it has become more perfunctory, where you're just looking for your dates and trying to get the case moving forward.

People come to mediation right now, when they're not forced to, with every intent on resolving that case. They're ready to settle it, they want to settle it, and they get their cards in order to get the job done. By adding the additional step of the neutral evaluator, it may be good for those cases that don't settle at mediation, because in the majority of cases people have an honest disagreement as to the proposed value of a case. I'm not necessarily opposed to the process of a neutral evaluator.

The other thing to consider is that the mediators who are going to be hired by the parties in the private sector will more than likely have substantive background to become the neutral evaluator, if the parties so choose. We don't have to have a different person as mediator and neutral evaluator. We do need to have somebody different from the mediator to the arbitrator, because the mediator will hear issues that may not be under proper evidentiary rules. So I'm not in favour of having a mediator and arbitrator as the same person.

Mr Crozier: I've always had a latent desire to be a mediator, because it seems to be so much nicer than this partisan atmosphere we find ourselves in and it can be more of a consensus-builder. But in any event, that leads me to the question, do you have a standard which you and others who are private mediators can maintain? In other words, how do we know, when we go to the private sector, perhaps any more than on the government side, that we're getting quality mediators?

Mr Hendler: There is a code of ethics which is put out by various organizations. There are a number of international organizations for mediators and arbitrators; one is called SPIDR, Society of Professionals in Dispute Resolution. There is a code of ethics as to conflicts of interest and abilities. The majority of mediators who are out there adhere to those, not by legislation but by their own personal code of ethics. This goes to the question of the honourable Frances Lankin: There is no government body that governs it. The marketplace, as I said before, in Ontario in particular is very sophisticated. People want a certain mediator because they've dealt with that person, they know their abilities, both in the underlying substantive matter and their procedural abilities. So it's market-driven as opposed to regulated.

Mr Crozier: I certainly think it's something we should consider, and I was interested in your observations.

The Chair: Thank you very much to Dispute Resolution Services for joining us today and helping us with our deliberations.

ARBITRATION AND MEDIATION INSTITUTE OF ONTARIO

The Chair: We now welcome the insurance section of Arbitration and Mediation Institute of Ontario. Mr Bowles, welcome to the committee.

Mr Patrick Bowles: You have before you just a two-page document outlining some suggestions we might have the committee consider, but also we are sort of an institute-type organization. Attached to the documents you have our mission statement, criteria for membership, our code of ethics, mediator criteria, just to give you some background about the institute.

We are something of an institutional-type organization as opposed to a private mediation service. The previous group before you was a private service. I'd like to draw your attention to the first recommendation there, "In the definition of 'private' arbitration, mediation and assessments include institutional as well as private ad hoc arbitrations, mediations etc." The reason is that we have a standard set of rules governing arbitrations and governing mediations which are made available to the public or to anybody who's in this process, so we have a standardized way of processing the information.

We also have, as I said, a code of conduct; we have a board of directors, which is elected annually; and we have a membership of about 360 people. This membership really composes the backbone of our institution and is drawn from a very wide area of background—architects, lawyers, doctors and engineers. Part of our work is to try and match the dispute with the particular expertise. That's one of the advantages of the institute, that it has a very broad background.

Recommendation 2: Our suggestion is that we should exclude the OIC from arbitrations and mediations and allow the so-called private or institutional organization to carry it. Primarily, as was mentioned before, it does lead to confusion or could lead to confusion. All arbitrations and mediations should go to private or institutional hearings.

Recommendation 3: We would suggest that the rules for arbitration and mediations and other processes be standardized so that everybody basically is doing the same throughout the province. However, by mutual consent, the parties can modify the hearing rules and the arbitrator's mandate. In the tort hearings, the arbitrator should have, we suggest, the same authority as the courts. I notice in the proposals that various powers have been given to the courts. We suggest that the arbitrator should also have some of these powers—for example, to impose structured settlements—as you're proposing with the courts.

Recommendation 4: As I mentioned, all mediators' and arbitrators' mandate should be subject to standardized rules and, as I said, mutual consent of the parties required for modification.

Recommendation 5: Accident benefits: Disputes restricted to private and institutional mediation and arbitration procedures and assessments should be considered as part of the above process; not excluded from it, but as part of the choice that sometimes the parties may wish to exercise—have an assessment, independent evaluation, and so on.

Recommendation 6: Designated assessment centres: I don't know what the plans are for this but I can see there may be some problems. My suggestion is that service providers be allowed to provide these designated assessment centres throughout the province.

Recommendation 7: Tort disputes: Again, the parties have a choice of either going through arbitration and mediation or going through the court system. One exception I might have is that in the litigation system disputes relating to quantum should be settled by mandatory mediation and arbitration. Very often, these require expertise which can solve these issues much more effectively than, say, pushing it through the court system. Of course, liability issues should be settled through the court system or by binding arbitration, again at the option of the parties.

On the last point, disputes relating to the interpretation of insurance policy wordings and the Insurance Act should be fast-tracked, either to the courts or specially appointed experts for binding opinions. Again, there's a great delay by using the court system to getting disputes resolved or issues resolved, particularly legal issues, and they can be perhaps fast-tracked through the system.

I thank the committee for listening to our presentation.

Mr Wayne Wettlaufer (Kitchener): Thank you for your presentation, Mr Bowles. One of the things I've noticed in both presentations this morning, unless I'm putting words in your mouths, is that there is a concern about the ability of the Ontario Insurance Commission to properly mediate and arbitrate disputes. Is that correct?

Mr Bowles: Yes.

Mr Wettlaufer: Could you give us a little more detail on that, please?

Mr Bowles: I think, as mentioned before, their scope is somewhat restricted in their ability to resolve disputes, whereas if the ADR process is looked at in its totality, it gives more choices to the claimants to find a better solution. Secondly, the choice of the arbitrator/mediator is very important. It's very important to have the background of the dispute; for example, if it's an accounting issue, that the arbitrator/mediator is fully versed in accounting issues. Therefore, the selection of the arbitrator is very, very important. Thirdly, I think the rules we use can be more beneficial, both to the insurance company and to the claimants, instead of using the OIC rules, which I think are somewhat limited in structure. So there are primarily three reasons.

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Mr Wettlaufer: Prior to the setup of the alternative dispute resolution system, under the old insurance policy the insured and the insurer were able to select their own specialist who then in turn could appoint an arbitrator. Could you fill us in as to whether or not there were problems at that time that led to the creation of the alternative dispute resolution system?

Mr Bowles: I'm not familiar with some of the background there. This is prior to the—

Mr Wettlaufer: Prior to ADR.

Mr Bowles: In what sense?

Mr Wettlaufer: Under the statutory conditions of the insurance policy of that time, both were allowed to select their own arbitrator who could then appoint a neutral arbitrator.

Mr Bowles: Oh, you're referring to appraisals and evaluations and property losses.

Mr Wettlaufer: It wasn't just property losses; it was also bodily injury, BI.

Mr Bowles: I'm not aware of it, but I just think it wasn't well established at the time to be used successfully. I think the market has changed, the movement has changed, and I think there's more willingness, by the legal community particularly, to look at these issues. There was a lot of difficulty in getting them through, but I'm not aware of any particular problems with it; it simply just wasn't used effectively.

Ms Annamarie Castrilli (Downsview): Let me congratulate you, Mr Bowles, for a very concise and clear set of recommendations. I gather that the underlying premise of your paper or your position is that there ought to be consistency and there ought to be clarity, which I commend you for. Let me just ask you a couple of questions to elaborate on some of the recommendations you made. Your first recommendation talks about private arbitration including private arbitration, which almost seems self-evident, but perhaps you could talk a little about how your organization, which I assume represents private arbitrators, accredits those arbitrators.

Mr Bowles: How we accredit them? First of all, there's a membership process. People have to apply, fill out an application and send in a résumé. Then that is reviewed by a committee as to its acceptability. Usually then, if the background is sufficient, they have some sort of background expertise that can be used in this process, they are accepted as an associate member.

The next stage is that they have to become a full member, and that is they have to take a designated course, either in arbitration or mediation. Usually they are run through the university or some private organization which we recognize and which we have approved. So these courses are actually accepted by the board as being of sufficient quality to satisfy our procedures.

The next level actually is if somebody has had a number of years of experience, then they can apply for chartered mediator or arbitrator status. Again, they send in their experience, what has happened, occurred. I think they are interviewed. Then this designation is refused or put aside, depending on the application.

But there is a graduating process. There's a continuing interest. They must stay a member of the institute. We have various programs put on during the year which we try to encourage people to attend. So there is a definite structure and process in place.

The other point too is that if they do have hearings under the institute's mandate, they are basically obliged to follow the institute's rules—in other words, for uniformity and conformance—and there is of course a code of conduct which can be exercised in the event there is a complaint.

In the insurance section, we also have a process to review any complaints with respect of fees that have been charged by the arbitrator or mediator, or any disputes arising out of the hearing.

Ms Castrilli: Your third and fourth recommendations talk about standardized rules. Has your organization done

any work in that area? Do you have a set that you abide by, for instance, that would be of use to us?

Mr Bowles: Yes, we do. I will be submitting some more information and we can submit these rules to you for your consideration. They have been worked out by committee, people who have a lot of experience in the areas, both in arbitration and mediation, so we do have a standardized set of rules, yes.

Ms Castrilli: I have just one final comment, with respect to recommendation 7. I'm intrigued by the notion of fast-tracking. That's a fairly common technique in other areas of the law where all you're dealing with is an interpretation of a particular statute. It requires no evidence; it's all done by affidavit. It would seem to me that would be a very easy solution to some of these problems and save some time. I guess that's what's behind your recommendation.

Mr Bowles: Yes. Alternatively, if there is, say, a panel of experts who can be called in to give binding decisions on these issues as opposed to going to the court system and others waiting for your time, that's an alternative situation that the committee might want to consider, that there be designated individuals who can apply for this position and have the expertise so they can be called upon to give binding decisions to the parties in a relatively short time frame.

Ms Lankin: I really only have one question. It's with respect to the uniformity of rules. When I was asking questions earlier of the previous presenter, part of it was difficult for me to understand: how this operates out in the private sector where it's not regulated at all. You are suggesting that even that process should be subject to the same sorts of rules that are under the Arbitration Act.

I spent a bit of time as a member of the Workers' Compensation Appeals Tribunal, and in the early days, working through the development of the rules of practice, which were very similar to what you would find in any administrative law tribunal, I would worry about an individual seeking an alternative dispute resolution and not knowing, for example, that they were dealing with someone who understood the rules around disclosure and due process. So I'm just wondering, is this a problem now that there isn't uniformity of rules, or are you just saying that needs to be made clear for the future as this emerges as a larger field in insurance?

Mr Bowles: I think there's little doubt that the way things are going now, it's going to become a very significant field for commercial disputes, for insurance disputes, and I think it is necessary that there are standard rules that people can adopt. As time goes by, people will become very familiar with them, particularly the legal community, so they don't have to be reinvented every time there's a dispute; also too with the flexibility that they can modify or amend them by agreement on both sides to suit certain circumstances. For example, they may want to change the time frames as to when the arbitrator is to render his report. I think it's safer. I think it makes the system private in a sense, yes; but open, not closed. So people will understand, as time goes by, the ground rules. I think over the course of any business lifetime, many business people will be involved in

disputes. At least they know they're there and they know how to work with them over a period of time.

The Chair: We thank the Arbitration and Mediation Institute of Ontario for its presentation to us this morning.

JAMES PESANDO

The Chair: We now move to Professor Carr, University of Toronto. I understand this presentation will be made by Mr Pesando.

Dr James Pesando: Yes. A resident of Milton, Ontario, I might add.

My colleague Professor Jack Carr, with whom many of your committee members will be familiar, prepared a brief with regard to one key feature of the draft legislation. Unfortunately, Professor Carr is travelling this week. Having consulted with Professor Carr, I agreed to present the essence of his remarks to the committee. I should add that I too am a professor of economics at the University of Toronto.

The basic message in this brief is straightforward. The draft legislation proposes that the innocent victim of a motor vehicle accident be permitted to sue for 85% of net income. From an economic perspective which encompasses both equity considerations and efficiency considerations, the appropriate response should be to permit the innocent victim of a motor vehicle accident to sue for full economic recovery; full economic recovery consists of 100% of earnings. Second, in order to simplify a set of issues with regard to taxes, it is appropriate to permit the individual to sue for 100% of pre-tax income.

Very briefly, the economic arguments are as follows: From the perspective of the efficient operation of the insurance system, what we as economists want is to ensure that those who are the high-risk drivers, those who represent threats both to themselves and to the third parties in effect bear the full cost of their driving records. In order to do so, it is important that the high-risk premiums that are directed to high-risk drivers fully reflect the economic cost that those negligent drivers impose on society as a whole. So from a point of view of the efficiency of the insurance system, economic analysis tells us it's imperative that those who are at fault bear the full cost, from a social perspective, of their actions.

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From an equity consideration, economic analysis strongly supports the notion that an individual should be allowed to recover his or her full economic loss. For example, in the draft legislation it is proposed that an injured party be able to recover 100% of health care costs but only 85% of a net income loss. There's no reason in economics why we should treat differently an out-of-pocket expense for health care, as opposed to an out-of-pocket loss for future income. The 100% target for economic loss receives considerable emphasis in this brief.

The second feature of the proposed draft legislation is to suggest that the 85% be applied to the net income of the individual; that is to say, the income less taxes, less unemployment insurance premiums, less Canada pension plan premiums, for instance. Clearly, in order to fully compensate an injured party, one can look at the net income of that individual as a basis for awarding his or

her loss of future excess income, but only if one then appropriately recompensates the individual for the taxes that would be due on the net income that would be awarded to that individual.

There are two approaches to appropriate compensation for taxes. The first would be to essentially gross up the award once it's calculated on the basis of net income. The gross-up calculation is a very complicated calculation for both actuaries and economists, and I would simply emphasize that if the legislation were to proceed in the direction of awarding net income—that is to say, after-tax income to an innocent victim—then we would need to gross up the award, which is a complicated calculation. If we did not gross up the calculation, we would in fact be making that person worse off as a result of the accident.

The alternative that is suggested, but not with great clarity, in the draft legislation is that perhaps if we award net income we can mandate a structured settlement. The advantage of the structured settlement would be that the structured settlement could be awarded net of tax to the individual. The problem with the mandated structure in essence is that it simply does not suit the circumstances of every individual. It's easy to imagine cases, for instance, where an injured party was hoping to acquire a home and to use his or her stream of earnings to secure a mortgage against that home. The awarding of a structure, although it might make progress on the tax issue, is not going to restore that person to his situation prior to the accident.

I have not yet seen a persuasive reason for the 85%. As I reflected prior to coming today, I thought perhaps that's an attempt to recognize that someone who has lost their earning capacity will not need to incur certain expenses associated with going to work. But it quickly became clear to me that this cannot be the logic, because many of the cases which the courts, for example, will have to address are situations where an individual perhaps has lost the use of his or her legs because of an automobile accident and now must take a sedentary and presumably less well-paying position. Obviously in this case we're comparing an individual who works prior to the accident perhaps at an occupation which requires some physical dexterity; after the accident the person still works but is in a sedentary job. Clearly it would be inappropriate to premise an 85% rule on the notion that this person has been relieved of the costs that most of us incur when we go to work.

The actual brief itself lays out a number of observations, carefully written by Professor Carr. I will be pleased to speak in response to any questions you might have on those contents.

Mr Crozier: Good morning, professor. I want to get your opinion. I should preface it by saying that I happen to be one of those who believe that the innocent accident victim should receive 100% compensation. Because you're an innocent victim, that should not mean you should have any less of an economic settlement than if it hadn't happened.

You've covered one suggestion where you don't have the expenses you had when you were working, perhaps, but another one that's often suggested is that there has to

be some incentive for the person to go back to work. In other words, you shouldn't be able to stay at home and have the same income. Could you comment on that?

Dr Pesando: Certainly. Let's imagine the simplest case, where someone is so clearly incapable of work as a result of his or her injuries that there's no what we in economics call moral hazard problem. There's no potential work disincentive. So clearly for a significant number of cases the concern about the work incentives created by 100% replacement is simply not relevant.

Secondly, one of the obligations of the courts, as represented by the attorneys for both parties, is to ensure that the innocent victim makes the best possible effort to mitigate his or her loss. So within the current rules, if you will, in certain cases with which I am familiar—for example medical malpractice cases, just to remove the circumstance from motor vehicle accidents—one of the issues that does arise is that the defence will argue that the victim has not made full attempt to mitigate his loss, and if the courts can be convinced that is the case, then of course the victim is not awarded the full amount of his income loss but some appropriate amount to offset the fact he failed to mitigate.

So from the perspective of 100%, if I get to the bottom line, if I am injured by virtue of an unfortunate event in a hospital—I recover 100% of my loss—the same concerns that you raise about work incentives obviously apply to that circumstance as well, and I think that the present system is very much aware and in fact seeks to address with some aggressiveness exactly that concern.

I would conclude by saying that clearly, in principle, one does not want to award an innocent victim full income loss if that is not in fact the case, but the current procedures allow evidence to be brought to bear on that issue, and that itself is presumably the deterrent, and the court will make a finding if someone is malingering or not.

Mr Crozier: Do think then, another viewpoint, that these reductions have been put into auto insurance plans to simply minimize or reduce the cost and therefore the premium?

Dr Pesando: Clearly for no-fault benefits, where there is no distinction between an at-fault party and an innocent party, in order to handle exactly the type of concern that you have raised, for example work disincentives, it's very customary to put in deductibles and to not allow full recovery.

The example that I would use as an analogy—at the University of Toronto our long-term disability plan replaces 70% of our earnings. That 30% gap is designed to exactly address the issue that you've raised: to make sure that professors, who I quickly add do work, don't simply decide to retire on 100% of their salary if for whatever reason they're injured and have to decide, are they or are they not able to fulfil their duties? Well, if the answer in the mind of medical opinion is that they are not, there is a 30% loss relative to gross earnings that is in fact not paid.

So many insurance provisions do provide for, effectively, co-insurance and deductibles, but there is nothing in the way in which an economist would look at the loss of income by an innocent party, and again I would em-

phasize, why should a victim of a motor vehicle accident be treated differently than the victim of a surgeon's knife that went astray? In both cases yes, not a pleasant thought, but 100% of loss of income would be the appropriate response from an economic perspective.

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Ms Lankin: I should begin by telling you that I have a different position with respect to the issue of tort and its appropriateness in the auto insurance field and tend to see a disability insurance program as a fairer way for all involved. I don't believe it always is so easy to know who is the innocent accident victim and who is at fault or the degree of fault. I see and have seen in the past many cases take years in courts, with people not getting justice in the end in any way that helped them make their lives whole again as they tried to sort through all that.

But putting that aside, let me say that if we are returning to a system of tort, I agree with your arguments completely with respect to the level of recovery of economic loss. I don't see any reason to support 85% of net; it doesn't make sense to me either in that world.

I'd like to ask you, though, about the economic argument that you advance. You said that as an economist you're interested in seeing that bad-risk drivers pay premiums that bear a relationship to the full cost of their risk to the system or their cost to the system. I think we would all want to see that, and I'll bring this back to why we're here. We're here because this is a mandatory product for drivers to have, so the government has a role there, and there's a problem with rates; the public perceives the rates to be too high and out of control, so government's trying to design a product that can be delivered to the public at the right premium rate.

We all, when we look at that, want to make sure that the rates are reflective of good driving records and bad driving records. To me, that should be doable within a no-fault system the same as it is within a tort system. There's a cost to the system and there's a risk assessment to the driver, and the rates should reflect that one way or the other. I'm not sure why you were arguing the return to the tort as one that will help us see rates that are more reflective of driver risk.

Dr Pesando: The issue would be that in either a no-fault system, for the sake of argument, or a tort system the argument is the same. We want the risk premiums that are paid by negligent drivers to reflect the social cost of their behaviour. On that ground alone, if within a no-fault system the insurance premiums would be identical, so to speak, to the insurance premiums charged under a tort system, in the sense that the high-risk driver is severely penalized, the economic argument applies to both cases, just as we wouldn't want in the no-fault system to only compensate 85% in the context of therefore keeping premiums for high-risk drivers lower than elsewhere. It's the same logic.

Ms Lankin: Let me come at the question from the point of view of what we have to try and do, which is to produce a product which will have stable premium rates out there in the marketplace. One of the things we hear from certain aspects of the insurance industry, and this is refuted by the legal community—we've seen numbers and we've been presented with information that would

suggest that the reintroduction of tort, particularly without caps and particularly without the deductible, both verbal and dollar thresholds that are there, is going to reintroduce instability in the system and drive costs up in the long run. Do you have an observation on that from an economist's point of view?

Dr Pesando: As an economist, if you were to argue that under, for the sake of illustration, a no-fault system and under a tort system you manage to succeed in creating the exact equivalent incentives for bad drivers, then there should be no increase in accidents in a no-fault system relative to a tort system. I think that's a very big if, and I suspect that's where really a lot of the debate flows.

But the bottom line is, if you have a principle that says innocent victims ought to be able to fully recover their economic losses, then there may at some point be tension between that definition of equity and the insurance premiums that are collectively paid in order to ensure that such victims are recovering 100%, not 85% or 50% or any other number.

So the tension exists, and from an economic point of view the potential cost saving in the first instance involves ensuring that to the best extent possible we punish the high-risk drivers not only through the courts, if that's appropriate, but also through appropriate insurance premiums.

Again, I'm quite happy to acknowledge that we could keep premiums low by arbitrarily, let's say, awarding 50% of excess income loss, in which case the tradeoff can't be more clear: That is to say that we keep insurance premiums down collectively but we basically don't appropriately compensate innocent victims.

Suggesting that one wants to start with the innocent victim is the notion that elsewhere in the system, if one is a victim and loses, for example, in income earning capacity, that is replaced 100%. The moment we begin to treat automobile victims differently than, let's say, medical malpractice victims, then we're moving into an area in which, if you will, the ability to bring an individual who's an innocent victim back to his or her pre-accident state, at least as best we can, is being compromised in the area of trying to keep premiums down.

Clearly, controlling the costs in an insurance system is an important issue, and from an economic point of view that involves administration, it involves making sure that you do your best to control fraudulent behaviours, and most importantly, from our point of view, it involves making sure that bad-risk drivers pay the price.

Mr Sampson: Thank you very much, professor. I want to start off by saying I've been known to be a student of economics. In fact, I was reminded by one of my professors not too long ago that I wasn't a student long enough, and I thanked him very much for that comment. Afterwards, though, I kind of thought whether I should have thanked him very much for that comment.

But one of the things I've learned over the six or eight months I've been looking at this thing is that in spite of the theories one might want to have that would justify 100% as opposed to 80% or 90%, it all boils down to the fact that you can't have it both ways, unfortunately. If we

pay more on the tort side for economic loss, we're going to have to take away from somewhere else.

I guess that begs the question, how does that leave the at-fault accident victim, who may need to have a certain amount of recovery expenses but because of the limitation on the policy will have to go on the public purse? I guess that begs the question, what's the economic theory behind that justification? Is it fair that the public purse should pick up the shortfall if somebody is left falling between the cracks?

Dr Pesando: Canada is noted for its safety net. In the event we're an at-fault driver, there are, of course, no-fault benefits with the appropriate deductibles, but the at-fault driver may in fact have to depend on other branches of the social safety net under certain circumstances, and that's what the social safety net is there for.

Mr Sampson: But is it fair then for the general public to pay for those expenses when what triggered the demand for those services was caused by an automobile accident that they weren't involved in? What's the fair economics of that?

Dr Pesando: That's a tougher issue. It comes down to should it be drivers, through their insurance premiums, or taxpayers at large who bear the costs for those who are at fault and who fall into the social safety net. If there were a way of raising the insurance premiums of that at-fault driver to try and recover, then that would be the route that economics would suggest is the most appropriate. As a general comment, you want the cost to as closely as possible reflect the events in question.

Mr Sampson: Right.

Dr Pesando: That's a fair comment.

Mr Sampson: It also basically identifies the whole dilemma that I think this committee has now realized we're facing. There are two things to be dealt with here: the balancing act between no-fault, basic benefits for somebody regardless of their fault, and basic benefits or benefits available to somebody based upon their fault or not being at fault. There's a balance there, and there's also a level of the two.

Dr Pesando: If I can use an analogy, if a criminal breaks into a jewellery store and we, the public, collectively pay the cost of incarceration and the court costs associated with putting this individual in jail, we don't go back to the jeweller and say, "Look, you weren't at fault, but you are in the jewellery business and therefore this is one of the costs of doing business," and therefore this incarcerated individual in some sense should be charged with a special tax rate that we put on jewellers. I think that if I started to think carefully about that line of reasoning, I would go back and say that if there really is an at-fault individual, there are certain costs we collectively pay, and the criminal justice system perhaps is the best example of that.

Ms Lankin: I suspect, however, the jeweller's insurance costs would go up.

Mr Steve Gilchrist (Scarborough East): Thank you, professor, for your oral presentation. I hope it isn't unfair to ask you questions about Professor Carr's report.

Dr Pesando: No, please do.

Mr Gilchrist: I'm just trying to resolve in my own mind an apparent difference of opinion he might have

here from your presentation. In his section 29 he says, "There are good economic reasons for not providing 100% coverage for first-party insurance." Am I to deduce from that that you and Professor Carr are making a clear distinction between the rights and the income recovery that should be available to innocent victims, as opposed to those rights and the income recovery for the driver who's at fault?

Dr Pesando: Exactly.

1040

Mr Gilchrist: Okay. So you have no problem with there continuing to be an incentive for people to drive well, but knowing that their income might suffer if they are less than—

Dr Pesando: Exactly. As Professor Carr emphasized, there's quite a distinction between what is called third-party insurance, where I seek to recover economic loss, and first-party insurance, where regardless of at-fault there is a certain benefit that's paid. In order to contain the cost of the no-fault component, it is perfectly legitimate from an economic point of view to put in the kind of deductibles and coinsurance principles that permeate insurance as a whole. So there's no conflict between Professor Carr's views and mine on this at all.

The Chair: Thank you, professor, as I know we appreciate your presentation.

ONTARIO COALITION OF SENIOR CITIZENS' ORGANIZATIONS

The Chair: We now welcome the Ontario Coalition of Senior Citizens' Organizations, Mr Morris Jesion and Mr John Kruger. Welcome to the committee, gentlemen.

Mr John Kruger: Thank you. It's a real pleasure to appear in this room before this august body. I can tell you I've been in this room many times as a deputy minister, but generally I've been cut to pieces. I can only hope you'll be more sympathetic.

Ms Lankin: We'll be much more generous.

Mr Kruger: If you'll be gentle with me today, I would appreciate it.

The Chair: We're known for our gentleness.

Mr Kruger: Oh, you are.

Mrs Marland: There's life after the civil service.

Mr Kruger: Yes.

I should tell you, I'm here today because the co-chairs of our committee are fighting other battles. They're in Ottawa fighting the battle on pensions, they're fighting the battle on medicare, they're fighting so many battles, and I'm here. I'm a member of OCSCO and on one of its senior committees.

The people I want to speak about and address today are not seniors like myself. I'm relatively comfortable. But there is a group of seniors that you should be aware of, and the effect that automobile insurance has upon them.

First of all, OCSCO is an organization, it's an umbrella group that has about 500,000 seniors involved. There are some 80 separate units and it comprises everything from multicultural groups to unions to organizations such as native groups and so forth. So we represent a very broad range.

We would point out that seniors are automobile drivers, and there's one point that I would make. To a senior, the demand-responsive transportation ability that a car gives gives independence. It gives them the sinew of their lives, particularly the group I'll now speak to.

In our organization, most of the seniors are at least 70 years, generally around 75 or older. A few lucky ones might have a bit of a private pension plan, but it's not adequate at all, because it was negotiated in the days before those things were rife. Very few had the ability to get into the RRSP legislation. They rely on OAS, Gains and a few on CPP.

We're under attack. This group is under attack from many sources. There's the proposals on medicare, which is a very great concern. There's the changes to the drug benefit plan. There's proposed changes to the tax laws. There's this GTA report, where a lot of them are living in their own homes and they're wondering about the reassessment of their properties. There's the proposed cuts being made to public transit, especially for the disabled, and there's the impact of what's happening in the disabled section of the CPP. So it's not that anyone within our organization with this very special group of people feels that government is going to cut their throat, but it's all of these little nicks that are going on. We can slowly bleed to death.

Automobile insurance, for this special group of people, has become a societal issue. The IBC, Insurance Bureau of Canada, is there to protect the insurance companies. It's the government that is there to protect them. Competition between insurance companies will no doubt result in the more active and better-managed companies surviving, and no doubt that will mean more consumers for them, more customers. But the point could well be reached where the profit within this type of insurance is so small they'll get out of it.

In the end, there is, as we see it, a push-pull going on. There's the push for profit, understandably, by the shareholders of the companies, and there's the pull to keep the rates low, and that's something that affects the group—you, ladies and gentlemen—and it affects us. We think that conflict cannot be easily resolved, indeed, if it ever can.

To suggest that seniors on a fixed income in this group can now shoulder some of the things that you've heard, the 40% increase over five years and that, is just going to force them out of the market. It's just not on. That's the reality.

On the premium side, the least which should be done is to more tightly regulate insurance rates for seniors. Seniors don't drive with the frequency of younger drivers. Many avoid expressways, they generally don't drive at night, and you won't find them driving around in souped-up cars. There's the odd one who might not have grown up a little bit who might be in a souped-up car, and I'm perhaps in that category, but most don't. They acknowledge that their behaviour is such that there ought to be a special consideration in the rating categories for these people other than the fact they happen to be 65.

You see, we have a lot of the seniors now helping seniors, and that's going on quite a bit. I'm one of those. I'm a young senior. I still ski the double diamond hills.

But the amount of driving I do for the activities, such as—well, they're all volunteer activities—puts me over the 16,000-a-year kilometre range, so I can't get a good rate, and a lot of our seniors, our young seniors, are in that category.

So we ought to look in the profile of individuals as we look at insurance. It's just been the statistical base. The IBC—I've always been a critic of it. But we should look closer at that and think of categories for this special group of people.

On the benefit side, income loss is not a major issue to seniors. We all get pensions, and whether we're injured or not, we're going to keep on getting those pensions. It's the restoration of the quality of life that is the greatest concern of all, and the benefit of \$185 weekly after 26 weeks, as we read it, hey, they've got to have that benefit almost immediately, because a lot of these seniors live alone.

I took off some facts from the human resources in the United States. We don't have applicable data here in Canada. I took it off last night on the Internet. I think some of it would be of interest to you.

By the time these seniors in this group reach 80 years of age, there will be 259 women to 100 men. That's pretty well applicable also to Canada. Sixty-eight per cent are attached in some way with their families, and generally they live within 30 minutes of their families. They visit the families for babysitting and all of the other things which give a quality of life to these seniors. Their families are very important to them; what else have they got but what they're going to leave behind? While a group attempt to take public transit wherever they can, there's the fear of being mugged and all these things, and we find out that some 40% use their auto. So to them that is a very essential part.

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Now, while we recognize that the higher the threshold, the more the rates are going to go up—because, it's quite right, there has to be this balance—the dramatic drop that's being proposed by this legislation, without an accompanying drop in the premium rates, just doesn't make any sense to us, doesn't make any sense at all. If you're going to drop what you've got now, you should have some benefit in return and that should be on the premium side; and if you can't do that, for goodness sake, leave it alone.

The right to sue is in this report because it's been a long-standing position of our association to have the right to sue, but let me explain what is meant by that. The association does not really go out on a limb to support the legal system by saying the right to sue ought to give lawyers more work; they're not saying that at all. Their concern is that it's only by that, by some means like that, that they might get restored the quality of life in an accident where they're not at fault. So when they talk about the right to sue, they look for that as a convenience. They don't really understand thresholds, they don't understand that, but they look upon that as a way to compensate them if they are not at fault.

Let me give you an example. This is happening all the time. This is on the property damage side. Your car is parked—and this has happened to our members—and

somebody comes down and hits it and knocks it into a total loss. Well, to that senior that is more devastating than it might be to other people. In the first instance, they've had an accident under no-fault. Up go the premiums. You might find the odd company where it doesn't, but they're very hard to find. Up go the premiums because they've now had an accident under no-fault.

Secondly, the cars they drive they have maintained for a very long period, and the cars today are very sophisticated. You just don't do the odd carburettor adjustment on them and keep them that way; they're very expensive. It's in the interest of the insurance company to pull out a book—and I'm not critical of this—and say: "That car's worth that, period. Boom. Go away, don't bother us." But the ability of capital asset appreciation by seniors, who receive about 1.4% increase a year—that's the present rate—on their pensions, just doesn't permit them to get the type of car they might have had, that they had before. So somehow there's got to be some device, be it even arbitration, to force this, or some court of appeal they can go to. I know you have the arbitration system, but I think somehow there should be a recognition that in property damage claims this should become an essential part of it, because there's nothing more infuriating to a senior—I can tell you this—than to be there and see their automobile wrecked and it wasn't their fault. So they want revenge and they want to be compensated.

Finally, the question of public ownership: We've talked about this at length in our organization and we believe that no insurance lobby and no philosophy of government can reduce auto insurance rates. We believe that; it's a fact of life. We have looked at the attempts by two governments, and now a third. It isn't going to happen; it's too complex.

The automobile is such an integral part of life and the economy. You've only got to look to the GTA report and you will find that in manufacturing automobiles the manufacture and the spinoff in the GTA area are second only to Detroit. So automobile insurance is a very special type of insurance and maybe it goes beyond the normal rules of insurance. That's something which should be looked at.

We believe that auto insurance rates will continue, and every time anyone says, "I'm going to reduce them," or even, "I'm really going to stabilize them," if they say, "I'm going to attempt to stabilize them," fine, but if they say they're going to do it, that's like walking into a field of quicksand; it'll kill you.

For these reasons, we believe there's a very slippery slope that we're going towards and we may end up in public insurance. I think the question has to be whether or not this isn't a very special type of insurance, as different to home or other commodities, because the automobile is such an integral part of our lives.

The good news is that all these seniors are going to die. Sooner or later we're all going to die, everyone in this room, and the group that are in their 70s to 80s. The bad news is we're going to live longer and we're going to be around and we're going to drive automobiles. This is going to be a continuing problem for us. Thank you.

Ms Lankin: Thank you very much, John. It's a pleasure to see you again and I appreciate your organiza-

tion's presentation. We had a presentation a couple of days ago from a senior, a man who is a veteran—in fact, he's a constituent of Mr Gilchrist's—who came forward and told us about the fact that he had a clean driving record, absolutely clean, no tickets, no speeding violations, no accidents, for 59 years; not only driving cars but, as a veteran, trucks, jeeps and tanks, and he never had an accident with any of them he told us.

Last year, he in fact had two minor accidents, one which was not his fault and one which he admits was. It was a fender-bender; you know, a bump into the back of a car. But he admits that was his fault and that he was distracted for a moment. But not extraordinary accidents or anything that showed evidence of bad driving habits or a bad driving record at all. He now can't get insurance. He's been bumped into Facility management and the cost is beyond his capacity and he and his wife, living out I think in Mississauga someplace need their car to—

Mr Gilchrist: Scarborough.

Ms Lankin: Scarborough? Sorry. They need the car; I think it's to visit his children who may live in Mississauga. There was a reference to Mississauga, I think, but in any event just for daily life, and he's absolutely devastated by it. Now that's a case where in fact he did have two accidents. We tried to get at a definition of what is a good driver from the insurance industry and not one of them will answer my question because in fact any sort of violation—lots of people will get a speeding ticket. Well, that's enough to make you an at-risk driver from the insurance industry's point of view. I wonder if you've any thoughts on that and how that corresponds with also looking at special rates for seniors.

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Mr Kruger: Of course, what you've described I hear constantly in our organization. It goes on all the time and that's the way. As long as the insurance companies—you see, the statistical base that they must use and have used for many years is an old statistical base whereby they take all of the premiums, all of the losses and they come to certain arbitrary rules. They don't look at the profile. You'll find the use of the word "devastating" within this brief. To the senior group that I've talked about here, that we represent and advocate for, they are the very people who are devastated because if they have even one accident, up goes the premium. If the car is wrecked at the same time, and it might be a 10-year-old car that was working perfectly, they can't replace it easily. So they're out in the market. And I'll tell you, if they are in any way handicapped, that's an added burden on it. So it goes on. There are going to be winners and there are going to be losers; we recognize that. All that we're saying is you should look at our group very carefully and there should be a very special rating category, because the group is going to grow in time.

Mr Wettlaufer: John, it's good to see you again. You've been around this issue for a long time.

Mr Kruger: Oh, you better believe it. I've got whiskers on.

Mr Wettlaufer: Yes. You'll be pleased to know that we are considering some kind of a seniors' insurance plan, but we don't know what form it's going to take.

Mr Kruger: We would love to be able to help you. In fact, I made the representation to Mr Sampson that there

should be a special advisory group of seniors set up so that we might be able to advise just what are some of the problems on an ongoing basis.

Mr Wettlaufer: Some of the suggestions you have mentioned here are certainly going to be taken under advisement, as well as a number of others. The one thing that I was a little surprised to hear you talk about was full tort and government automobile insurance, because I didn't remember you being a fan of either. Of course you're aware that in the case of the government automobile insurance we in Ontario here have more automobiles between London and Toronto than most other provinces have throughout their entire province; and even in those with government plans, the premiums are not significantly different from Ontario's, especially when we consider coverages.

The issue that I want to address, however, is the issue of tort versus no-fault. What we're trying to do here with this new legislation—it's not even legislation; it's draft legislation—is the issue of affordability and coverages: What can the average person afford and what kind of benefits does the average person expect? I realize that it's a very delicate balance, but the whole issue is a compromise. You know that probably as well as any of us, with your past history.

Mr Kruger: First of all, on the question of being a fan of tort, no, I haven't been a fan of tort. This is speaking personally and also on behalf of the organizations. To find the words within the threshold that will keep the lawyers at bay, so to speak, it's becoming even more pressing that we be very careful about tort now, particularly if we go to contingency within the legal system. You're going to see a field day. That's why one of the things we've said is that no-fault—no, I've not been a fan of no-fault either. You've got to try and strike a balance, and the balance that we have now with the limits where they are, one of the things that you might have to look very seriously at—and I hate to say it—is the meat chart. You might have to go as far as looking at that. As repugnant as that is, it might be the only way, because unless you control the benefits, you're never going to control the premiums. That's for certain.

On the benefits side, when I saw the benefits go down to the level that they are now, speaking now as an individual with some knowledge in this area, it didn't surprise me to hear some of the companies come forward before you and say that you're going to have a 7% increase, an 11% increase each year. It's inevitable. So what you've got to do, you've got to make that threshold as high as it can be.

The reason you have tort is to take care of the catastrophic losses. I remember, when we were in the auto board, the number of witnesses that we had, and a lot of them from the United States, said, "You don't know how lucky you are in this province because you've got OHIP," and there's a relationship they didn't have on the catastrophic losses.

I would think that if you're going to do that, don't muck around with the level of no-fault you've got. Try and tighten up your threshold, and for our people, we would be just as happy to see some other regime where there is a catastrophic loss, and it may have to be the

courts, to take care of our seniors just to restore their quality of life. On the other side, per unit there are more losses that occur in the property damage field than there are in the public liability field.

Mr Crozier: I'm particularly interested in the rates of insurance premiums for seniors because in my riding of Essex South I have a high percentage of seniors compared to many areas in the province. Having said that, I would hope that when we're finished with this exercise, one of the objectives, as has been mentioned by Mr Sampson, is that there will be a more competitive market, and I would hope that as part of that competitive market, that these suggestions of yours can be considered, that perhaps seniors, taking all the actuarial information into consideration regarding them, may in fact get rates that will reflect the lower usage of automobiles and so forth.

But what I wanted to get your comments on, and I'll make just a couple, is on the side of when you said it's devastating to have to replace a car when you only get actual cash value. There may be some other economic factors that seniors face, but certainly those are economic. There are working people in this province, the working poor, who from an economic standpoint are no better off than our seniors. I think we have to recognize that they too face the same problems seniors do; it's just that there's an age difference. I wondered if you had any comment on that.

Mr Kruger: That is quite true, and a lot of these people, the working poor, are the children of the seniors that I speak about and there is as much concern in the seniors for their children as for themselves. However, the working poor still have a lifespan ahead of them and they still have some capacity and ability to accumulate perhaps more assets, to be able to get a job, to do those types of things. A senior isn't; it's the end of the line, period. I suggest to you that on balance it is more devastating to them at that period in their life than it is to the working poor. Granted that for the working poor with a young family, it is devastating to them at that time, but they have a capacity to get out of it, at least an ability or the chance that the senior doesn't have. That's what makes it different.

The Chair: We appreciate your presentation and your input into our deliberations.

Mr Kruger: It's a pleasure to appear before your committee. You have been very gentle and kind.

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CANADIAN ASSOCIATION OF REHABILITATION PROFESSIONALS

The Chair: We now welcome the Canadian Association of Rehabilitation Professionals, Ms Gram.

Ms Joanne Gram: I'm Joanne Gram. I'm a partner in a rehabilitation disability management firm called Associative Rehabilitation. I've been doing that for 15 years. I'm a member of CARP, during those years, which is the Canadian Association of Rehabilitation Professionals. Previously, I acted as the treasurer for CARP Ontario, and now I'm the president of CARP.

We've submitted various presentations on OMPP, Bill 164, previously, and we've worked in all four systems.

Today I am here on behalf of the Canadian Association of Rehabilitation Professionals. What I'd like to do is give you an introduction on what the Canadian Association of Rehabilitation Professionals is, what we do, what our professional members do for a living and then talk about some of the recommendations and a summary at the end.

The Canadian Association of Rehabilitation Professionals, CARP, has been established for over 25 years as the leading association for rehabilitation in Canada. Presently, there are approximately 1,400 members in the Ontario society of CARP. To many in the field of rehabilitation, there are different meanings of who the various professionals may include. You've heard presentations from lawyers, insurers, different interest groups, and what I'd like to do is give you a definition of what our members do so the basis of my presentation may be established.

There are basically two distinct groups within CARP. One is the vocational rehabilitation group and the second is the medical rehabilitation group. Our professional members, who are accredited as such, include vocational rehabilitation case managers, vocational counsellors, rehabilitation consultants, vocational evaluators and job placement specialists. CARP's associate members are made up of the medical rehabilitation field. They include—I may miss a particular group—mostly psychologists, occupational therapists, physiotherapists, chiropractors, medical doctors and medical specialists. Again, those are our associate members.

Vocational rehabilitation is a systematic process which assists persons who have limitation in life functioning as a result of accidents or conditions such as sensory impairments, mental illness, developmental disabilities, chemical dependencies and/or physical disabilities to achieve their personal career and independent living goals. Clearly, today we're here to speak about the group we serve, being victims of accidents.

Vocational rehabilitation and case management involve a number of different things, such as counselling, communication with the members of the rehabilitation team, goal setting, growth or change through self-advocacy of the disabled, psychological, vocational, social and behavioural interventions.

The special techniques and modalities utilised within this process will include, but are not limited to, a variety of different things and I'll tell you exactly what those are. They are assessment and evaluation; vocational or career counselling; individual group counselling sessions; case management, referral and service coordination, basically; program evaluation and research; interventions to remove environmental, employment and attitudinal barriers; consultation services among multiple parties and regulatory systems; job analysis, job development and placement services; and the provision of consultation about and access to rehabilitation technology.

CARP follows a clear set of guidelines, standards and code of ethics and promotes these among our members. CARP offers to its members an accreditation process and a certification process which are for the sole purpose of CARP in its efforts to advance the rehabilitation of all persons with disabilities as outlined in its incorporation

documents. We represent the injured people. Those people are our clients.

Our code of ethics deals such issues as conflict of interest, who our client is and effective, timely delivery of service. The objectiveness of that service is also important. CARP members are employed in these processes in a number of private and public sector organizations. With this as a basis, this is how I make the board of directors' summary and conclusions about the new legislation.

We've reviewed the draft legislation presented by Rob Sampson and have the following comments to offer.

We believe that there have been good solutions to the problems at hand with the auto insurance industry presented in the draft bill on automobile insurance. However, we reserve our comments to the areas being vocational rehabilitation. We can't possibly comment on financial analysts/economic issues.

Our position is that the \$75,000 with an eligibility to collect these benefits for 10 years proposed for medical and rehabilitation expenses is likely an adequate amount for the average type of case. I believe there's probably been a lot of research into this and I know that a lot of cases never reach anywhere near that amount of money, so it's likely an adequate amount. It would appear that additional costs over and above the \$75,000, if they are required, if a case slips through the crack of the definition of "catastrophic" and it is necessary to the rehabilitation of the person in question, would be available in this system under tort.

We agree that the insurer be required to pay all reasonable and necessary rehabilitation expenses that reduce or eliminate the effects of any disability resulting from the accident and allow the person to lead as normal a life as possible. That's taken directly from the bill. It's not unlike the definition of what's necessary for rehabilitation under the other systems. Examples of these expenses include vocational training, life skills training, family counselling etc.

What we believe, however, is missing in this definition is a definition of what "reasonable" constitutes. You could ask several different interest groups, several different insurers, several different lawyers what "reasonable" means and they may all have a different definition of that. I think it would be valuable to have that understood by all.

A \$1-million cap for catastrophic cases is absolutely necessary. It is our position that the definition of "catastrophic" should be reviewed again with medical professionals such as physical medicine and rehabilitation specialists as well as occupational therapists, to ensure that it is inclusive of the group of people requiring an increased amount of benefit for medical and rehab expenses. That would look at the medical definition of "catastrophic" as well as the functional definition of "catastrophic" through the OT group. It is also in need of review to ensure that the category is clear to everyone involved, that being the insured, the insurer and the rehabilitation provider.

We agree that expenses for case management should be covered as a service, as well as vocational counselling, social counselling, family rehabilitation, as we said earlier, and as outlined in the draft. We like the fact that

responsibility is also placed on the insured to participate in rehabilitation and to seek employment.

We feel that section 42 is appropriate. It states: "Before an expense in respect of which a medical or rehabilitation benefit may be payable is incurred, the insured person shall submit to the insurer, (a) an application for the benefit; (b) a treatment plan in the approved form; and (c) a statement by the person's health practitioner authorized by law to treat the person's impairment that the expense is reasonable and necessary for the person's treatment or rehabilitation.

We would like clarification what "a treatment plan in the approved form" is in terms of who would be responsible for developing that, such as the IWRP, which is the individualized written rehabilitation plan, which is what CARP would endorse as a reasonable treatment plan. I think it meets some of the criteria but it adds some as well, as treatment plan is defined in the draft bill.

An IWRP, which is the individualized written rehab plan, is a comprehensive and logical plan for rehabilitation. It reflects the quality of the initial evaluation, rehab planning and the ongoing rehabilitation process, and makes this process explicit, as well as the treatment plans included in it. The IWRP also makes explicit the contractual nature of working partnerships with the client and the other participants of the rehabilitation team.

The format which is endorsed by CARP is basically the following: The long-term planning or the long-term goal is explicitly outlined in this treatment or implementation plan. The long-term goal that would be considered appropriate would be (1) a return to work with the same job, same employer, same occupation; (2) return to work with the same employer in a modified work situation; (3) return to work with the same employer in an alternative job.

The second choice in the hierarchy, as we call it, of the return to work would be return to work with a new employer in the same occupation; return to work with a new employer in modified work; and return to work with a new employer in alternative work.

The third would be self-employment and encouraging that as a treatment plan, again, if that's necessary to change occupations.

Fourthly, an education or retraining program.

And, not lastly but it ends up being last on the hierarchy of work, there are people who either have returned to work and require an IWRP treatment plan and/or will never return to work, and those people come under the category of social or life adjustment treatment plans.

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I wanted to talk to you about the hierarchy of work so that you could see that there's a definite process in rehabilitation planning. It's not a haphazard development that people have just pulled out of the air. There is a process and protocol that should be followed, both in terms of the people who are undertaking the service with the clients and with the rehabilitation team and also with the clients themselves.

There are different stages of rehabilitation as well and it's important to recognize these in planning and implementing treatment. The five rehabilitation stages acknowledged by CARP are: (1) the assessment stage; (2) the

adjustment to injury stage; (3) job readiness-preparation stage; (4) job placement stage, and (5) the return to work or the activities of daily living follow-up, again for that social rehabilitation category.

The IWRP clearly outlines—and I think this is the part that's similar to the actual proposed bill—there are interim objectives that the client must achieve. So there's a very stringent goal and there are objectives that the client must achieve to reach the next stage in the vocational rehabilitation process or the treatment plan. There's an action plan which includes the services and mutual responsibilities necessary to help the client reach those goals, understanding that the clients themselves are responsible for undertaking this as well.

There's an evaluative component to measure successful accomplishment of objectives. In other words, if there's a treatment plan being suggested, the treatment provider is being asked to give definitive outcome measures as to when the treatment will be completed, the time frames for that and the anticipated hours or estimated costs that it will take to undertake this program.

Lastly and probably most importantly in the development of the IWRP is the accountability factor. Generally the life of any one IWRP is approximately three months. It's signed by the client, who is the injured person, and the significant members of the rehabilitation team, indicating their willingness to comply with the intent of the action plan. The signatures of the client, his or her attending physician and/or health practitioners, the rehabilitation consultant and the insurer are sought. Again, this is to reinforce that the treatment plan is agreed upon by everyone involved in the rehabilitation so that it will be a smooth transition and hopefully the rehabilitation will not be stopped and started.

That brings me to one of the major concerns that the CARP board of directors has at this point in time, the use of designated assessment centres as a dispute resolution system. It's not clear to us how this system will work any better, and we're concerned about the effectiveness and the timeliness of the DAC system. We wholeheartedly agree that a dispute resolution system needs to be in place but are concerned that the DAC is not the most efficient method to undertake this.

Rehabilitation is most effective when it's well coordinated and executed in a timely fashion. I'm sure you've heard the benefits of early intervention, and these cannot be stated enough. A system such as the DAC could be and is in the position that they will act as a stop-start mechanism in rehabilitation. We do not feel this is appropriate, and it's our position that this will result in increased costs both in terms of rehabilitation and increased income replacement benefits. If the goal is to keep these under control, we do not feel that the DAC system will be appropriate for that. Payments for medical and rehabilitation benefits should not be halted pending the DAC resolution system.

Lastly and yet most importantly, CARP is the organization which deals with accreditation of our members, ethics and quality and standards of rehabilitation service in Ontario. We feel that we should be consulted on issues such as the DAC process and any issues related to case

management and vocational rehabilitation that will formulate this legislation.

Overall, we would like to extend our compliments on the time, effort and consideration to all groups that was given for what appears to be a very sound start on the resolution of the problems at hand. We urge you, while you're considering the presentations, to look at who's presenting them and ask for substantive evidence as to the generalized comments that some people might make about increased costs on certain things. Thank you.

The Chair: If we could move to a one-minute round of questions, could I start with the government.

Mrs Marland: Thank you very much for your presentation. I actually have a number of questions, but now that I'm limited to one minute—

Ms Lankin: Twenty seconds of which has gone.

Mrs Marland: I'll do it to you. One of the things we've now been hearing over this past three and a half days at this point is the whole question of—who does what to whom, I think, is about the easiest way to put it.

Ms Gram: Exactly.

Mrs Marland: And of course only one person pays at the end of the line. These aren't my words, so I don't want it to be attributed to me, but certainly it's come out, not in exactly these words in these hearings but certainly in the halls and certainly on phone calls that I've been receiving, and that is that these rehab centres have just mushroomed like Topsy. In fact, there was a suggestion that if you want to have a licence to print money, you open a rehab centre. The other part of that is the suggestion by some of the groups that have been in front of us which is to have an accreditation system for these rehab centres.

Since speaking on behalf of CARP, you're speaking on behalf of all the professionals who in fact are involved in the rehab centres—

Ms Gram: No. That's why I clarified at the onset. CARC, which I think you heard from yesterday through Dr David Corey, represents rehabilitation centres. CARP, very similar but yet there is a distinction, represents vocational rehabilitation consultants and case managers. There is a difference. They may work for rehabilitation centres or be part of rehab centres—

Mrs Marland: That's what I mean.

Ms Gram: —but it's a distinctly different field. Rehabilitation centres—and I think this is a very important point, because I've been watching the hearings too—I'm very tired today, having stayed up late last night—and was enthralled with all the people who were on yesterday. I'm really concerned about making sure that people understand the definitions and that there are differences between the different categories and the different things that are going on. I'm not sure—

Mrs Marland: Look, I'm going to be out of time, so let me just ask you the question.

The Chair: You've asked already.

Mrs Marland: But some of your 1,400 members will be working at rehab centres, right?

Ms Gram: They could be, yes. I can't tell you how many.

Mrs Marland: Would you advocate the accreditation of rehab centres so there is a standardization throughout?

Ms Gram: I guess I need to know a bit more about what accreditation process—I know personally what they're recommending. I'm not sure whether CARP would advocate that or not.

Ms Castrilli: The issue of case management has come up before. I wish we had more time to explore it, but I wonder if you could give us some sense of what case management actually entails. We've had some individuals come before the committee and say it's expensive, it's irrelevant, it's unnecessary.

Ms Gram: All they do is make telephone calls. I think I heard that at one point.

Ms Castrilli: I won't get into the details, but it is a view out there that it's adding to the cost.

Ms Gram: I realize that, but I'm a strong advocate, obviously, through CARP, that case management can also be a very strong benefit to the rehabilitation process. If there's someone who understands the resources in the community, which rehabilitation clinics are effective in terms of their outcome, which physio centres are effective, we can work with the attending health practitioners as a case manager, again distinct from vocational rehabilitation consultant, to coordinate those services to get the best outcomes possible.

Early intervention, again, is something that cannot be underestimated, and I fear that all the discussion about case management—is it viable or isn't it viable—the idea of early intervention may get lost in the shuffle. Obviously the two points are critical. You need early intervention to be successful, because getting involved eight to 10 months after the accident isn't going to be as successful as very early on, and two, you need that process to be centrally coordinated so the costs are not driven up by ineffectual treatments in clinics.

I think it's the obligation of the person who's coordinating those services to discuss the actual treatments in question, such as through the IWRP, outline what the treatment plan is, what the cost is, and most importantly, what the outcome measure is. I think the rehabilitation clinics are taking a very strong step towards measuring outcomes and I think that's an important part of deciding what treatment is appropriate. It's not to say all treatment's going to be effective, because it isn't.

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Ms Castrilli: With respect, this is an important point. I just want to ask you, does your organization have any documentation on what is effective case management? Could you share any of that with us?

Ms Gram: The only thing I brought with me today is our code of ethics which talks about timely effective and some of the parameters and the service delivery models of case management. Again, the two are different, and we have members of both.

Ms Castrilli: So you really don't have anything.

Ms Lankin: I'm glad to hear that you've been watching the hearings so you have a sense of the dilemma that the committee faces with the various points of view that have been brought forward, and a lot of finger-pointing going on at different aspects of the system in terms of what is contributing to increasing premium rates.

Yesterday, I talked about a situation of a constituent with acquired brain injury where his wife was a social

worker who happened to be able to take on case management functions which helped us be able to make a decision, as a province, to relocate him from a US-based residential situation to services here in the community at home with his family and much cheaper.

So effective case management, as you say, can in fact both contribute to early identification for treatment plans to effective rehabilitation and cost-effectiveness.

I guess what I'd like to ask you then is, given what you've heard and what this committee has heard from some parts of the insurance industry, in particular that one of the major contributors to increasing premiums under the existing legislation is the increased cost in med rehab, can you help us understand why that's the case? There are two things particularly I'd like you to touch on.

In part, I think we understood a lot more about early intervention and the benefits of rehabilitation, and people are getting help now, which costs money; in the past they might have found themselves in other parts of the public system, and that's not identified as a cost transference. Secondly, this question about whether or not there are commercial interests which are driving the costs up in terms of the expansion of the number of operations and the ethics under which they operate.

Ms Gram: I've been really uncomfortable with the comments surrounding the medical and rehabilitation costs going up. I believe that the reason I'm uncomfortable with that is because, as we've heard today and other days, there are so many different groups encompassed in that medical and rehabilitation cost section that unless I were to know, and I think you should be asking, what parts of that have gone up significantly—is it physio, is it rehab centre, is it cognitive therapy, is it case management, exactly what have—I'm not sure anyone's going to be able to tell you. Perhaps the IBC will, I'm not sure. But I think those things are really important to look at, rather than lumping everyone together and saying everyone's ineffectual and they cost too much money.

I don't think I can comment on why the costs have gone up so much, except to say that in the pre-OMPP system at \$140 a week and \$25,000 in medical and rehabilitation expenses, there weren't a lot of people being rehabilitated. They may have gone to physiotherapy, they may have waited months and months and months in the public system to get their treatment, maybe not, maybe they got right in, but the sheer economics of it were that they cannot stay off work.

When the benefits increased, and they should have, under OMPP, I think that's when you saw the medical costs and as a result of medical interventions and rehabilitation being available, that's when you saw the surge of clinics, and clinics treatment facilities, case managers, all the rest of it. Again, I think it's up to the people that are managing the case, the case managers, to be able to establish what outcome they expect to have.

The other thing I'm uncomfortable with is that I haven't heard, in comparison, whether the income replacement benefits have been affected as well by good rehabilitation.

You're looking at the bad rehab and everybody wants to talk about everyone that's bad and points fingers and all the rest, but no one's talking about the companies that

are good, doing good solid work out there, that are getting very positive results for the injured parties.

The Chair: Thank you very much and we appreciate your input to our deliberations.

INDEPENDENT DRIVER EDUCATORS ASSOCIATION

The Chair: We next have the Independent Driver Educators Association. Welcome to the committee.

Mr Sohanlall Racktoo: My name is Sohanlall Racktoo. I'm the vice-president of Independent Driver Educators Association. Amir Kanji is the secretary-treasurer of this organization.

Since this is a new organization, I would like the committee here to have a feedback of what it's all about. It was established approximately two years ago. Its membership is approaching about 100. It is a member of the Driver Education Advisory Committee. It has affiliated itself with many safety-oriented organizations, which include the Driving School Association of Ontario; CPDEA, which is the Canadian Professional Driver Education Association; and the Ontario Safety League.

First, what I want to do here is to give you a feedback of what we think should be part of this legislation from an education standpoint. As we look at it here from an education standpoint, we have lots of difficulty with respect to dealing with the insurance companies over probably the past five years. This information I'll be bringing here to you is a grouping of all the different entities that have gone on from a membership, as well as the public, perspective.

I'd like to start from the first thing, the auto insurance and road safety. On the first page, if you look at it here, is "A Road Safety Approach to Changes in Auto Insurance Regulation."

Proposal 1: Driving instructors' perspective to promote and expand driver training.

Proposal 2: Driving instructors' perspective to expand and promote novice drivers with respect to competency and safety in the operation of motor vehicles.

Proposal 3: Driving instructors' perspective to control unsupervised motor vehicles in the province of Ontario.

If we go on to the next page, proposed changes to the present no-fault auto insurance regulation are seen by the public, as well as driving instructors, as a promising step in the right direction. We, the executive and members of IDEA, in addition to these proposed changes, would like this committee to further expand on these proposals to cover the important areas which promote road safety. The expanded areas to be covered by this committee are as follows:

Proposal 1:

(a) Legislative provision should be instituted which stipulates that any insurance company which underwrites auto policies must also include driving school coverage.

(b) Legislative provision must be instituted whereby driving school insurance should be accessible to experienced and non-experienced driving instructors.

(c) Legislative provision should be enacted whereby insurance companies would not be able to discriminate between driving school organizations and driving instruc-

tors, thus issuing exclusive clauses which destroy our ultimate goal of road safety.

(d) There should be a clearly defined legislative provision stipulating the criteria for assessment of driving school insurance based on merit.

Proposal 2:

(a) Provision should be legislated that a clear path is chartered for novice drivers upon entering and should continue until they are established within the system.

(b) Provision should be legislated that insurance incentives given to novice drivers who complete an approved driver education course must be expanded to cover all novice drivers to eliminate discrimination within the system.

(c) Provision should be legislated that novice drivers must earn insurance incentives granted by insurance companies, and in return there should be provision stipulating in writing when these incentives and percentage would become effective upon purchasing of insurance coverage.

Proposal 3:

Provision should be legislated whereby a system is set up that all cancellation of auto policies must be reported to the licensing control branch at MTO by all insurance companies. The licensing control branch must notify the owner of the vehicle of his or her insurance status, and a valid insurance document must be produced at an MTO office within a stipulated period of time. A penalty should be levied for non-compliance with these regulations.

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The challenges that face us ahead, from an education standpoint, are: licensed drivers in Ontario number approximately seven million; registered vehicles in Ontario number 6.5 million; the number of fatalities is approximately 1,000; the number of injuries in this province is 90,000; the number of property damages is 168,000.

The overall cost to citizens of this province is a staggering \$9 billion, which includes: 800,000 hours of police time; 150,000 days of hospital care; 74,000 visits to the emergency room; 38,000 ambulance calls; 9,000 fire department responses.

Looking at the challenge and analysing its cost, it's unacceptable and, as such, must be addressed by legislation of insurance delivery in the province of Ontario.

Road safety starts with teaching a novice driver, and driving instruction is a vital part of their education. Insurance is a tool of the trade and must be recognized if we are to continue sustaining growth and enhance education in road safety.

Ms Castrilli: Thank you very much for coming here. I agree totally with you that the way to reduce costs is to begin with appropriate education by qualified instructors. I confess I'm not at all clear what happens with driving schools and insurance. Since your first proposal deals with the kind of legislative provisions that you want to see, could you elaborate on what the actual situation is, how you are covered, what kind of insurance you're required to buy, what the efficiencies are with that?

Mr Racktoo: The actual situation at the present time is that the auto policy that's been underwritten is almost equivalent to the driving insurance policy. So what has happened is that it's reached a saturated point. As a

result, it's easier for an insurance company to underwrite an auto policy, which is at less risk, and as a result there are fewer and fewer insurance companies underwriting driving school insurance. So what has happened is a stagnated system. It has come to where the insurance company looks less at underwriting a driving school policy in favour of those with less risk factors.

Ms Castrilli: So is the situation that your individual instructors get insurance, as opposed to the driving school? Is that the concern?

Mr Racktoo: This is one of the concerns that we have: the stipulation within some insurance companies that gives an isolated, exclusive clause. What happens here in this situation is that you have to be part of that association. As a result, you have to agree with all the terms and conditions; if not or if there's difficulty, that insurance company doesn't issue a blanket policy to anyone else except in that association.

So what we're looking at here is that there should be a certain degree of generality within the insurance company, and if they want to offer that exclusive clause to a particular association, that's okay. But there should be a general clause, because safety involves the whole sphere, and by isolating it, then they are showing special preference for one particular organization, when in turn we are all in there for the same cause, which is road safety.

Ms Castrilli: What would that general clause say?

Mr Racktoo: For example, we have an organization at the present time, over the past probably six years, and if we call up this insurance company and get some information, they couldn't underwrite a policy for a driving school; it's not been stipulated, but it's always been refused. "I'm sorry, you'll have to go through this particular organization before, and this organization has to send written documentation to that particular company or the broker before this policy can be underwritten."

Ms Lankin: I'd like you to continue explaining this to us, because I have to admit that I don't quite understand yet what that organization might be. Is this an industry association and there are competitive industry associations? Could you maybe identify the problem just a bit.

Mr Racktoo: There are two parts within the driving school industry. There's the smaller driving school and then you have the approved school system. Actually what is happening here is that the larger schools have an exclusive clause within the industry, and the smaller schools are not being treated from the same standpoint. In other words, the smaller schools are subjected to higher premiums, which are almost three or four times what the larger schools or larger associations are being charged.

Ms Lankin: Your second set of proposals deals with novice drivers who have gone through education programs, and it refers to the fact that in many insurance companies' plans there are discounts or incentives for novice drivers who have completed approved driver education programs. You're saying it should be expanded. I'm assuming this is the same issue expanded to include people who have gone through your schools. I'm sorry that I really don't know anything about this part of the industry. Why are some schools approved and others not? What's the process? Why would it not be possible for the smaller independents to become noted as approved

schools? Is there a difference that we should be concerned about in terms of quality? How has this all evolved?

Mr Racktoo: We are all licensed by the province under the Ministry of Transportation. We are all licensed instructors. There are two parts in the system: One is an approved system and the other part is a non-approved system, where the driving instructor doesn't have a classroom but has all the facilities and an office. For economic reasons and because there's saturation in the market, many of these independent driving instructors who have everything possible to continue in this capacity have joined with the approved school system.

The insurance company has been represented over the years whereby the approved school system is given a 20% to 25% discount, if they take an approved driving course. This same discount that's being offered to the approved system is not being offered to the non-approved. Many people, about 50% of the people in this province, don't go through a driving school.

Ms Lankin: Someone who is a customer of yours or of a member of your organization, which is not part of the approved school, doesn't get the discount. I understand what you're saying: If they've had the same kind of education, training, road safety training, that's not fair. But I'm trying to get at understanding why there's an approved and a non-approved, why your organization membership can't become part of the approved system.

Mr Racktoo: This is within the terms of the association. The association sets its own guidelines and terms. At the present time, a non-approved school is accepted in the system. Last spring, we went to the government and we had it stipulated in the terms and conditions of one organization, which is the Canadian Professional Driver Education Association, that the non-approved schools would become a part of the approved school system. So this is okay. But the problem here is the discrimination this has set up, because if 50% of the public doesn't go to a driving school and they are good drivers on the road, why shouldn't they be given the same credit as the approved school system? This is the point, that they are not being given the same accreditation.

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Mr Douglas B. Ford (Etobicoke-Humber): Mr Racktoo, how many people are in your association? This is a multifaceted question. How many people are in your association, how long have you been in this business, how do you classify your expertise and who sets the standards for insurance standards other than the Department of Transport? I just want to get a general background on you.

Mr Racktoo: This association has been in existence for about approximately two years. Could you repeat a few of your questions?

Mr Ford: How long have you been in this business yourself?

Mr Racktoo: I've been personally in this business for over 20 years.

Mr Ford: How many people do you have in the business?

Mr Racktoo: Approximately 100 and it's growing. We've been two years. It has been established—

Mr Ford: This is in the two years?

Mr Racktoo: In the two years. It started with 11 founding members and it has risen to approximately 100 members.

Mr Ford: How do you classify your expertise in this business, and who sets the standards in your business?

Mr Racktoo: The larger organization attempts to set the standard in this business.

Mr Ford: The driving school?

Mr Racktoo: The driving school association.

Mr Ford: Where do they set their standards from? The Department of Transport?

Mr Racktoo: They set their standard in combination with the insurance company, with the Department of Transport and feedback from within the members of the association.

The Chair: I thank the Independent Driver Educators Association for their presentation to us today.

KINGSWAY GENERAL INSURANCE CO

The Chair: Our next witness is the Kingsway General Insurance Co, Mr William Star, president. Thank you very much for joining us today, sir.

Mr William Star: Thank you. I appreciate the opportunity of speaking to the committee. I'd firstly like to say that the changes recommended by Rob Sampson and his staff are a step in the right direction. Although there are improvements that can be made, the changes proposed should help to keep down the cost of automobile insurance.

Actually, along those lines, I was rather disappointed with some of the remarks I've been hearing about the proposed costs by some people, saying if you don't have the changes it's going to cost so much more, 15%, 20% more per year, and even with these changes, some are talking about 7% and 8%. Quite frankly, I'm not really sure whether these people who are making these remarks have the information and all the details they should have.

I was a member of the Ontario Task Force on Insurance in 1986 and we wrote this nice little report. One of the interesting things is that Dr Slater, who chaired that committee, was an economist and not familiar with the insurance industry at the time but certainly learned very quickly, as Rob has. But one of his comments was the inadequate industry databases and how necessary they were. He was rather shocked at an industry as old and the size of the insurance industry was not really keeping all the information they should and using the information. Fortunately, since then, there has been improvement.

The reason I bring it up is that a year ago, January 1, 1995, the industry was asked to start coding individual accident benefit claims separately. In this information that is being collected in a database by the Insurance Bureau of Canada, there's a great deal of information breaking down the person's occupation, whether they're unemployed, employed, self-employed, deemed employed. It gives the gross income, the type of injury, the length of time the person has been off.

Frankly, I haven't seen any statistics produced like that; I don't think you as a committee, and possibly Rob Sampson also, have been receiving this information from

the insurance industry to give you more of an idea of how much it's going to help to cut the benefits down from \$1,000 a week to \$400 a week.

What effect is this going to have on rates? Is the person who is unemployed the one who's really causing the problems? Are they getting most of the money out of this system? Is that what's costing the higher premiums that everyone has to pay? Obviously everybody's unhappy with these higher premiums. The higher premiums don't help the insurance industry because we pay it out in losses.

I will say, from the indications I've had so far, 1995 has been a better year for the insurance industry. I think part of the increases we have been seeing has been sort of a catch-up because of the various changes we've seen under Bill 68 and Bill 164. I think we've almost reached a plateau, where I don't think you're going to see the substantial rate increases in the future that you've seen in the past, particularly with the help that the changes that are being recommended here will give us with respect to fraud and being able to cut down on that. There has been a great deal of work on fraud, during the past year particularly, and I think that's what has helped bring down claims.

One thing I would like to point out, in the brief that I've handed out, the very last three pages have some charts and these charts were made up from statistics that were produced by the Insurance Bureau of Canada.

The first of these charts in appendix A is the accident benefit claims and adjustment expenses incurred. If you look at that chart, you'll see in the first six-month period of 1990, before OMPP, accident benefit claims amounted to less than \$200 million. By the last half year of 1994, we were over \$1 billion in payments, a very substantial increase. You're talking about over \$2 billion in a year and it's very important for this committee to understand where that \$2 billion is going, what sort of categories of injuries are being affected by that and the length of the time and whether they're employed or unemployed people.

The second chart shows the average claim, and again in the first six months of 1990 we're talking about an average claim of less than \$5,000. By 1994, we're looking at an average claim of over \$25,000, a very substantial increase. Obviously, if you have those sorts of increases in claims, you're going to have a corresponding increase in premiums. It follows. The only way to cut down premiums, of course, is to cut down the benefits. You have to look after the needy, but you don't have to look after the greedy.

I feel that in the insurance industry we have been experiencing a great many problems with the greedy looking for every benefit they can find, not only from the claimants but from many health providers and so on. You can even look at some of the lawyers, the way they've cashed in on the system. In our area in Mississauga the Yellow Pages of the phone book have over 30 pages of lawyers advertising for claims. We didn't have that in the past, so obviously it has become a very profitable field.

You talk about the tort system feeding the lawyers and many people complain about that. I can tell you, the lawyers are getting more money under the no-fault

system representing the people than they ever did under tort, and the nice thing is they grab the 20% right off the top of that cheque when the person gets it. They get the money now, not two or three years later, when it gets to trial. So tort is not the problem. The suggestions here of returning to a partial tort system, particularly for economic loss, are very important. I'm personally in favour of that and I've always spoken out in favour of it.

The last chart I'll point out is the cost of earned premiums per vehicle; in other words, the actual amount of premium required to pay for losses. Again, if you look at the first six months of 1990, the premium that was required just to pay accident benefit losses was \$73 per vehicle. By the time we got to the last six months of 1994, we're up to \$442 a vehicle. That's where the increase in premium lies at the moment. Without a correction in that and without the reduction of benefits and without the elimination or reduction of fraud, we're going to see that increased. I believe the proposed changes have gone a long way towards reducing that.

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In October 1991 I delivered a brief to the Ontario Auto Insurance Review, which was chaired by Blair Tully at the time and, as a matter of interest, I recommended tort recovery for the purpose of monetary loss. Unfortunately, Bill 164 removed the right to sue for all out-of-pocket. The proposed changes now address this issue.

We also recommended at that time the formation of a Facility pool to reduce the premium costs for better drivers within the residual market. We also suggested a form of "take all comers rule" to guarantee that everyone can buy insurance in the province of Ontario. Both those changes were made in January 1994; however, a point system was introduced to control the distribution of applicants. The point system has not worked, and we have suggested on many occasions that point system be removed.

John Kruger, for example, speaks of the senior drivers and how, after one or two accidents, suddenly they're thrown into the Facility and how costly it has become. The whole idea of the pool that was put into place was to allow an insurance company to take a person that may have been insured with them for 20 or 30 years but has unfortunately had one or two accidents and simply place them in this pool, but leave them at the standard rate level rather than throwing them into the Facility where the rates are two and three times as high. The unfortunate thing is, because of this point system, if the person exceeded a certain number of points under the system, the company couldn't transfer them to the pool. They had to throw them out, then they had to apply for coverage through the Facility, and that is one of the problems.

There aren't that many people involved in relation to the drivers as a whole in Ontario, but for every person who is being inconvenienced like that and every senior driver, for example, who has been put in a position where they can no longer afford to drive because their premium has gone from \$800 to \$3,000, I'm very sympathetic towards them. The removal of the point system I think would eliminate a lot of those problems, and that's why I specifically mentioned that here.

The other item I have brought up in the past and I would like to see addressed at this time or some time in the future is to form a catastrophe pool for accident benefit claims. We have a very rich benefit here in Ontario and, even under the changes, there will be very rich benefits payable to people. The cost of reinsurance particularly under the present system, Bill 164, is an unlimited situation.

An insurer doesn't know how much any claim might be in the future; if you have three or four or six people in the vehicle and if they're very seriously injured, each one could cost \$4 or \$5 million over a period of time. Suddenly we're looking at claims where one accident could cost \$20 or \$30 million in injuries, and it's very expensive buying reinsurance for that.

If we had a catastrophe pool such as Michigan and other states have, where the industry pools these losses and once it reaches, for example, \$250,000 or \$500,000, the pool takes over, then the cost of reinsurance would be substantially reduced. I think that would be helpful. I would suggest that alone would reduce premiums by 3% to 5%.

In the interests of time—I know you are running behind and I don't want to delay—I've covered a number of points, 10 points. I'll go through them very briefly.

I have found one of the most abused benefits under the no-fault system is the payment to people who were not employed at the time of the accident. You have to remember the principle of insurance is to replace what is lost, not reward people, and rewarding them is what we have been doing in the insurance system. That is what is increasing costs. The proposed legislation is going to control quite a bit of that problem. It's going to deal with many of the unemployed and reduce the benefits in that area, and that is a step in the right direction.

One of the other problems—and I'm sure you've heard a lot about this—is rehab and all of these other services. The rehab service and physiotherapy and so on are springing up like fast food centres all over the place. I've never seen so many. I don't know why so many people need them now when they didn't need them five years ago. It's pretty obvious that five years ago the money wasn't available. Now it is available, so suddenly everybody's hurt and needs it.

In British Columbia, for example—I spoke about fraud and auto insurance in British Columbia this past summer and I met with the people at the Insurance Corp of British Columbia. Out there they schedule benefits so that a rehab centre can't charge \$60 and \$70 for a treatment as they do here in Ontario. They have a schedule of \$15 or \$17 or whatever on the treatments and it's very well controlled and that saves money, so you don't see all these centres springing up. You find the more legitimate centres that are there to look after the people, not just to make a quick dollar, and that's very important.

But even in the area of vehicle damage, we run into towing problems. I know in Metro Toronto the licensing commission has been trying to deal with the towing problems because insurers get bills after an accident that will sometimes go up to \$400, \$500 and \$600 for towing and storage; that takes a big chunk of the premium, when the towing charges should be more like \$75. But all of

these benefits have to be controlled, otherwise premium costs will keep on soaring.

There has been some comment in the proposed changes to control the authority of the medical practitioner for the insured, and I think that's very positive where there is a limit on the number of treatments they can have and, following that, they have to get the approval of the insurer or at least work with the insurer. That is important not only from the standpoint of saving money, but also to make sure the insurer is involved to see that people are getting the right treatment. I think, in many cases, they are not. They get in the hands of a service that is simply there for the money and they don't really care whether the person's ever cured or not. I think the involvement of the insurer is important.

Long-term disability concerns me a little in that we seem to be at the point where we're looking after everybody. Should we be looking after everyone? Should there not be some responsibility put on people? That was the nice thing about the tort system. People had to be responsible for their actions. If they were not responsible and they were careless and they ran into a tree because they were drinking or whatever, they didn't receive any money. Under a no-fault system everyone receives money. We're all at fault. We all have to pay. At least with the tort system you can control that. On the long-term disability I think there should be more involvement of tort rather than simply handing out money to everyone.

Payments for psychological benefits again seems to be a growing field. I don't have an answer for it because the brain injury association and all these groups seem to feel that everything should be paid for and they seem to find any little fault that a person's had, even if it's an existing problem for the last 20 years, but now they've had an accident, so great, this person couldn't work for the last 20 years and you'd better start paying him now. That costs a lot of money, and I can assure you this type of claim is going to be the big claim of the future, psychological injuries. That is something that should be dealt with a little bit more at this time.

I've also commented here on suspending payments until the DAC report is received. At present companies are required to reinstate benefits and that's a problem because the natural thing for a person who has been cut off benefits to do is say, "I want to go to a DAC centre," and we are required to start making payments to them. It might take another six or eight weeks and, in the meantime, they receive the benefits. Also, the cost of the DAC is often \$1,000 to \$2,000. This again adds substantially to the costs.

Optional benefits have been recommended. Frankly, I don't like optional benefits. They create a problem for the insurance brokers particularly. They have to recommend the coverages. Many people won't buy them at the time they're buying the policy, but then after the accident they go to the broker and say, "Why didn't you give me that coverage?" It can end up with a lot of lawsuits and it can be a serious problem.

The other thing is optional benefits apply to that specific person who has bought the benefits; they don't cover everybody in the car. So you have just individuals who might have these optional benefits and we'll give

them more money. It is my preference to see that people who require a larger amount of benefit buy it on an overall basis, buy it from an accident and sickness company where it will cover all types of accidents, not just auto accidents. I think that is a much better situation.

The removal of the rate approval system, I think, is very positive, some of the changes made there, because I think that the more you can increase competition the lower the prices will go. With the present rate approval system, it takes so long to get the rates approved and you have to project so far ahead, often 18 months ahead. You're charging more money than you need today, and I think that a file-and-use system will be very effective.

I commented on the point system in Facility earlier, and that should be looked at very seriously as well as the catastrophe pool. At the next Facility meeting that's coming in May, I'm going to bring this up again. I think they're very important issues. Thank you.

The Chair: Mr Star, thank you very much for your very complete report. We have used up our 20 minutes, and I wouldn't want to get between the committee and lunch. We do appreciate your presentation to us. It's been very helpful in our deliberations. Thank you very much for appearing today.

The committee has been provided with travel arrangements and tickets for next week, and I bring this to your attention. It is in the folders that have been presented to you, so you won't be phoning Sunday afternoon wondering where they are. It includes an itinerary and a schedule of witnesses to appear before us as well. There is also a motion that Mr Crozier would like to bring before the committee.

Mr Crozier: Mr Chair, I would present this motion and then you can instruct us perhaps as to how and when you would like to deal with it. What it says is:

Whereas the standing committee on finance and economic affairs (the committee) will hold two weeks of public hearings on the draft legislation on auto insurance; and

Whereas the hearings will receive a wide variety of opinions on the draft legislation;

Therefore be it resolved that:

1. Legislative research prepare a draft report on the submissions before the committee.

2. Such report will be submitted to the committee at the conclusion of the hearings.

3. The committee shall meet for one full day to consider such report and amend it as necessary.

4. Such report shall thereafter be forwarded to the Minister of Finance for his consideration.

If I could just have a comment, I believe when we were receiving the briefing from the Finance staff, at that meeting we briefly discussed how this committee might come to a conclusion on this. Initially I think it was suggested we'll just gather up all the information and it'll be sent off to the minister for his consideration. But I really feel, after two weeks of listening to presentations, that this committee should spend some time to consider a report, make recommendations on the draft legislation, and then perhaps when the legislation itself comes forward it may be in a more complete form.

Mrs Marland: I wonder if we can deal with this motion later in the day. If we don't have a cancellation—we probably will have, but if we don't—could we deal with it at the end of the day, because it's 10 after 12 and I think most of us have luncheon meetings.

Mr Crozier: I may not be here at the end of the day. That's the problem.

Mrs Marland: I need to discuss this, so I can't take any action on it right now anyway. If we could come back to it is what I'm suggesting, in that you've just tabled it now.

Mr Sampson: If I may, and I apologize to my other committee members, but I did have a discussion with Mr Crozier on this. He and I have had an ongoing discussion for the last couple of days as to how we might accommodate a more effective report from this committee to the minister. I am prepared to support the theme of this. I think we need to work out some of the technical issues as to how our poor research officer compiles a recommendation when after three days we've kind of been grappling with just the scope of the recommendation, let alone what a recommendation might be.

With respect to my committee members, I would like to perhaps table this one. I'm sorry, Mr Crozier, if I have to do that to you. We are in agreement with the theme, but I think we need to work out the technical issues as to how we deal with this one, given the short time we've got. I also want to make sure that we're not in violation of the direction from the minister and the House that has us here to begin with. I don't think we are, but I just want to make sure of that. We have to require that the Chair would look into that point.

Mr Crozier: Perhaps the Chair should ask this, but you're moving that we table it till the end of the day?

Mr Sampson: I'll table it whenever is convenient. Perhaps we can even slip it in between presentations. I don't think it's going to require a lot of discussion, to be quite honest.

Mr Crozier: We'll leave that to the Chair's discretion.

The Chair: We'll table it to the first opportunity. Thank you very much. The committee stands in recess until 1:20. I'd ask you all to be prompt.

The committee recessed from 1215 to 1325.

MARC MENARD AND ASSOCIATES/ ABILITY MANAGEMENT CONSULTANTS

The Chair: We're pleased to hear from Marc Menard and Associates/Ability Management Consultants at this time. Welcome to the committee.

Mr Crozier: Mr Chair, just a point: What's the OFL thing?

The Chair: There was a written submission from the Ontario Federation of Labour which was distributed to you, I believe, just prior to reconvening.

Mr Crozier: Okay, thank you.

The Chair: Mr Menard, please proceed.

Mr Marc Menard: Perhaps I should begin by explaining a little bit about my background and that will help shed some light on why I'm here today presenting before the committee. I'm a self-employed consultant to insurance companies who has specialized in the last few in economic loss determinations.

When the draft legislation came through, I thought it would be important to come and speak to you about some of the findings and some of the research I have been doing in relation to economic loss. I originally started in economic loss with the WCB when I was manager of research and analysis at the time when they implemented the economic loss provisions of Bill 162. Then when Bill 164 came along, people asked me if I would join the private sector and help them out in that regard.

The paper you have before you represents a study of claims that we have reviewed in my company over the past two years. They are Bill 164 claims. They come from all regions of the province. They come from seven companies throughout Ontario. They also are fairly representative of the types of injuries you get with motor vehicle accidents. They also come from different economic backgrounds; they also come from different employment backgrounds.

What I found in my analysis, in my study there—it's a preliminary study, as you can tell. There is much to digest in there. I had approximately 250 claims to input. Unfortunately, I was only able to input 150 because of the short notice in getting ready for today. I found that the size of the awards are relatively low if you compare them to what the worker's compensation has in terms of awards. Most will be in the neighbourhood of zero to \$200 per claimant, per week, which is a net benefit.

Some of the other things I found is that there is a definite link between the nature of the work a person does and the likelihood they will get an economic loss award. There's also a relationship to the seriousness of the injuries and the awards an individual gets under this system.

I'm not aware of any other study that's been conducted of this nature. There may be some. I have no idea. What I did was I took files, claims that were one year and beyond the date of accident or the date of onset of disability and examined them to see if there was a pattern and to see who was getting the awards, how big were the awards, and those types of issues. There had been a lot of criticism when Bill 164 came out that said that we couldn't we afford this, that this might not be fair, that it might lead to undue complications and expenses in the insurance system, so I wanted to see if that was the case.

I did find that there was a correlation to the nature of the work. I broke it down into four different categories, whether the work was heavy, medium, light or sedentary, and what I found was that most of the people who were working in heavy-type occupations and were still injured one year after the accident will probably receive an economic loss award.

Surprisingly too, there were some serious injuries, for instance, even quadriplegics and paraplegics that sometimes do not get an award in this system. That's because they've managed to retain a measure of transferable skills and a measure of ability to earn a living after their accident. In some cases there are some people who may have sustained serious injuries but would not get an award in this system.

Those who were not working at the time of the accident has been another complaint of Bill 164, that it will compensate people who are not necessarily working

and provide them with an economic loss award. They tend not to get awards in the present system as it exists. My concern here is that if we introduce the right to sue in this present process, what happens is it adds another tier of intervention. There's already a process in place. It tends to be more objective than not in assessing whether or not an individual has suffered an economic loss, and throwing in the third party, the lawyer in some of these cases, tends to create a lot of acrimony and resistance on the part of the claimants to receiving rehabilitation services.

One of the factors I thought was really important under Bill 164 is that, with the economic loss provisions, it forced the insurance companies to provide rehabilitation to individuals. The cost of the claims initially is very expensive—that's what most insurance companies will tell you, that the cost of the claims right now under this present system in the front end are very expensive—but long term they're closing the claims off a lot faster. As a matter of fact, in most cases they close them off at the two-year point instead of waiting three years under the previous system, the OMPP.

The other thing is that if you compare what the WCB has to pay in terms of economic loss awards and what the awards will be like in the present system, it's still kind of early because we're just at two years now. We're just starting to see some of the written offers. But the WCB has the experience of paying economic loss awards to 3.5% of all its lost-time claimants, people who have stayed away from work. Under this system, even one year beyond the accident, only 10% of the claimants will actually receive a written offer with an award. That's far less. I haven't been able to translate that because I don't have the statistics for the entire province, but that, to me, translates to far less than 3.5% of perhaps 400,000 claims.

It led me to question, as I was doing this study, why the elimination of the economic loss provisions under Bill 164 would be necessary with these new statutes. I don't see the wisdom of it. The economic loss under Bill 164 is again not as costly. It's costly up front, it forces the insurer to provide rehabilitation, but at the same time it forces the insured person to also cooperate and comply with the rehabilitation program that is made available to them. If they don't, they suffer the consequences. Likewise, if the insurance company doesn't provide rehabilitation, it too suffers the consequences.

What I have found is that those companies that do practise good claims management strategies and make rehab available to their claimants tend to be in better operating order. In the case of one company I'm working with, they've been able to reduce their weekly claims benefits by 30% just by reviewing their files and looking and strategizing and figuring out, "How do we help this person, how do we get them to the point where we've mitigated the loss in their claim?" and in that way were able to reduce the cost to the system.

It would be a shame for me to see the incentive to provide rehab to people eliminated, because I think it's been a driving force. I know that when they implemented it at the WCB, the reason they implemented it at that time, when I was working there, was that they wanted to

force the Workers' Compensation Board and the adjudicators and the case workers to make rehab available to people, and it works in that regard. At the same time, if you build in the provisions to force people to be compliant with the rehabilitation programs, that works as well.

Anyway, that's pretty well the long and the short of it. I think you'll see that the study itself, if you look at it, begins to explain some of the elements and the patterns that I've seen arise.

Ms Lankin: I find your work very interesting in some of the conclusions that you draw. We heard from an insurance industry representative this morning who actually said that he also thought things were starting to settle down under Bill 164, and while he still felt that it was important to take the steps the government was suggesting with respect to tighter caps and reintroduction of tort—that's another issue—he believed there was a learning curve companies have gone through, through the issue of claims management and particularly on the rehab side, although he was critical of the proliferation of rehab clinics that are out there.

We've heard from a number of people that pre-1990, under the old tort system, in fact there wasn't a heck of a lot of rehab going on and many of those people ended up in the public system. They may have had and been successful on tort claim or not, we don't know, but still the cost of this was picked up in medical rehab services in the public system and/or through income supplement if a person couldn't return to work. So it makes sense to me that under Bill 164 we would have this sort of bulge of experience with rehab right up front.

I'm taking from your argument that there's a real possibility that a couple of years out we would see a payback to the insurance industry with respect to lower economic loss awards and income supplements.

Mr Menard: As a matter of fact, now they're not going to be paying all that much either. I have a chart in there which shows the size of the pre-accident earnings these individuals had on a weekly basis and you see the size of the awards now; it's quite small, relatively speaking. Only a few individuals come anywhere near the \$1,000 limit. When I say "few," there's one in 150 there.

The other thing, as you mentioned, is the disruption. I've lived through several of these disruptions, both as a public servant and also in helping these companies cope with new legislative changes. In the insurance system they will have four separate tiers. They still have some old tort claims they're living with right now. When you introduce yet another changeover on top of that, I think that adds a tremendous amount of costs.

Ms Lankin: I think we would freely admit that there is room within the world of Bill 164 to move in and have better case management profiles, more mechanisms available around treatment plans and to tighten that up, and there was a task force set up to do work in that area. I just suspect that if we had a bit more time under Bill 164, we would understand better the elements of medical rehab and their importance in the long-term prognosis of injured workers.

Mr Menard: Just to carry on with that, I've added to my submission an article that I wrote about the

demedicalization of rehab and how you have to focus in on the vocational rehabilitation in this system to make it work, and if you don't—that's a big mistake that the companies make. They focus constantly on the medical issues and they forget these individuals still have transferable skills, still have a work potential in them and that's where they lose it.

Mr Howard Hampton (Rainy River): If we move off the system that you have set out and that you have, I think, argued a defense for, and we move to the system that is now being advocated, what happens to the victims who would have received some sort of fair treatment, as you argue, under the existing model? What would happen to them under the model that's being proposed?

Mr Menard: I think it loses its objectivity. Right now, you have criteria for what constitutes a suitable job for the purposes of your written offer, for saying, "You could do this job; now you can only do this job," and you follow the criteria. Now it's in the realm—because there is no definition of what constitutes a suitable job in the new legislation, in the draft, as far as I know, you lose a certain measure of objectivity. The tools you use presently, such as vocational evaluation, functional abilities evaluations, medical examinations, things of that nature, to establish objectively whether or not the person has lost ability and then earning capacity, you don't have any more.

1340

The other thing that happens is, when you throw in a third party whose main goal is to litigate rather than rehabilitate, then you throw confusion—you see, good litigation isn't always good rehabilitation, all right? Some lawyers are quite good. You talk to them and you discuss the issue of what kind of rehabilitation their client should have, and they're quite open to this. They say, "Okay, instead of going for the big award, we should maybe do the right thing and help them get proper rehabilitation." Others, on the other hand, equate good rehab with good dollar value in their settlements.

Mr Sampson: Thank you very much for your detailed presentation. I've seen some data similar to this. Where did you extract your database from?

Mr Menard: From seven companies that I've worked with, and they have claims across Ontario. There are some from Thunder Bay, there are some from Ottawa, Hamilton—everywhere.

Mr Sampson: So there's no regionality here that you were able to pick out.

Mr Menard: No. I just took the first 150 out of my pile of 225 there and I just input them into the database.

Mr Sampson: I will go through it in detail, but just as I flipped through I found rather interesting pages 6 to 8, and the charts associated with that, and also page 10 as it relates to soft tissue injury, which is normally a classification of injury that I think generally insurance companies will tell you they have some difficulty in dealing with under this current system.

It's interesting to find that that's by far the largest injury category that attracts the loss of earning capacity benefit, which, for the uneducated, is the benefit that's paid two years after the injury to deal with disability continuing thereafter. But counter to that is a tremendous

number of studies, one of which was done in our neighbouring province of Quebec that indicates that in soft tissue injuries—and they have a duration curve that they speak to there—a large share of them recover within the first two months of injury, let alone two years of injury. I'm wondering whether this isn't telling us something. What do you read between that?

Mr Menard: In reality, though, a lot of the claims do carry on, and you'll find, especially in auto insurance, that it's those individuals who have medium to heavy type of work who tend to stay away from the kinds of—now, I haven't been able to delve into that. It's just that right now that's what I see from the statistics I have. I haven't commented on that either.

The other thing that happens is that people who are away from work in auto insurance are less likely to return, because there are no provisions to force employers to take them back, as they do with workers' compensation. So the moment they are injured in a car accident, it's a little more difficult to get them back to work. That might explain it.

Mr Sampson: I think you've got to look at the numbers we're talking about here in relation to the light and medium percentage of awards that go under the LAC category; again, 37% and 35%, respectively, for medium- and light-duty work getting LAC awards, but in the heavy-duty category, 18%, a significantly lower number.

Mr Menard: That's just because in my sample fewer people were actually working at heavy work when they got injured. But you'll notice that all of the individuals who were working at heavy work did get an offer and an LAC award. These people were all off one year after the accident, so the likelihood of them returning back to their pre-accident job is significantly diminished. I think it's less than 4% after one year that the person will be returning.

Mr Sampson: Right. I'll be interested as I look through this to get a better understanding as to how we get 49% of soft tissue injuries going into the two-year category to be qualified for a LAC when the studies don't indicate that that's anywhere near the duration at all for an injury like that.

Mr Menard: I know, but they are. That's all I can say. A lot of those are getting settled, though, before they reach the two years.

Mr Crozier: Good afternoon. On page 17, in Conclusions and Recommendations, in the paragraph midway down the page, you said, "To our knowledge, there is no evidence to suggest that the insertion of a litigious process will make economic loss determination any more efficient, fairer or less expensive than it already is at present." Could that be interpreted as, it won't have any effect on premiums one way or the other?

Mr Menard: I think it would have an effect on premiums. Claims adjusters whom I speak to when I work with them say that the moment you begin to insert the courts and the lawyers, it does increase the costs because there's less cooperation on the part of the claimant in the rehab process and also in determining whether or not there's been an economic loss.

If you're going to change this thing, I would say that you should look at providing a definition of what a

suitable job is and also a definition of what pre-accident earnings are. How do you determine this? Even if you go to the courts, right now most people agree that how you establish economic loss is the difference between pre-accident earning capacity and residual earning capacity.

Mr Crozier: So by saying it won't make it any less expensive, you're saying in fact it may make it more expensive.

Mr Menard: It probably will, yes.

Mr Crozier: Okay, I appreciate that.

Mr Menard: There's an added expense in there that wasn't there before.

Mr Crozier: Just briefly on claims management, it's been suggested that companies that have a good claims management system are then able to control costs. At the same time, it's been suggested to me that there isn't any incentive for companies to manage claims because if their claims management gets better, they can't then increase premiums.

Mr Menard: Yes. You may have heard that. I haven't heard that. As a matter of fact, the companies that I work with are far more interested—especially if you're an adjuster and you're carrying a caseload of 200-plus, it's a real headache. You want to close off as many of these claims as possible. You want it manageable. It's an incredibly stressful job, when you get down to it, so they would want to simplify their lives by closing claims off.

Mr Crozier: So you would suggest that most companies would try—

Mr Menard: Want to practise good adjudication, and good adjudication and good rehabilitation are not mutually exclusive.

The Chair: Thank you very much, Mr Menard. We appreciate your presentation to the committee today.

PETER KORMOS

The Chair: We now welcome Mr Kormos to the committee.

Interjection: Who?

The Chair: The Honourable Mr Kormos, MPP, Welland-Thorold.

Mrs Marland: I don't know about "Honourable."

The Chair: Mr Kormos, we have 20 minutes together.

Mr Peter Kormos (Welland-Thorold): Thank you, Chair, and thank you to the committee for letting me engage in this somewhat novel exercise. I was motivated by any number of things. One, I know there are some people on the committee who have never heard me talk about auto insurance; there are others who have, to their regret, I'm sure. But as well, and although you've made reference to my position here in the Legislature, I believe very strongly that it's important to bring some observations to this committee and put them on the record, hopefully for the committee's consideration and certainly for the government's consideration, that might not be specifically brought forward.

Were Mel Swart available, obviously my predecessor in Welland-Thorold and an advocate, as all of you know, as a New Democrat for public auto insurance, I'm sure he would have been making these comments to you. Just as he addressed the committee that discussed Bill 164 during

the course of the last government—and he did so on behalf of advocates of public auto insurance and a large number of New Democrats who fervently hope for the establishment of a public auto insurance system—I come to this committee today, I believe, speaking in the same vein.

1350

One of the observations that is particularly worthy of making is the unfortunate competition that seems to have developed between the concepts of tort and no-fault. If I can put this in something of a historical perspective, understand that there was a time not too long ago in this jurisdiction when automobile insurance was on the basis of pure tort. In fact, it was New Democrats and it was people like Mel Swart who advocated for no-fault, to the point where no-fault, in a peculiar sort of way, became identified with New Democrats. It was New Democrats, people like Mel Swart and others who were concerned about the plight of all accident victims, who recognized that there had to be something more than merely tort. There had to be some relief for the person who was injured for whom there was not a tortfeasor, be it the single-vehicle accident or the person marginally at fault or the person even perceived as being at fault. Obviously, a blended tort/no-fault system, tort undoubtedly taking the upper hand, was the system that pre-existed Bill 68, which was the auto insurance reforms of the Liberal government of 1987 through to 1990.

Actually, I'll note this: I have been blessed with a long enough tenure here, albeit brief in the total scheme of things, to have witnessed the minefield that auto insurance creates for premiers of all political stripes. It certainly did for the Liberal government of 1987 to 1990; it did, and I don't think there's any secret about it, for the New Democratic Party government of 1990-95; and I suspect there are still a large number of mines waiting to be detected in that field by the government of the day.

I would commend to those people on the committee of any caucus reading some very important, seminal investigations into auto insurance: of course, the Slater report modestly, but most importantly the Osborne report, which made some significant observations other than its criticism of public auto insurance. Both of those, as well as the Kruger report of the Ontario Automobile Insurance Board, made it quite clear, as have other commentators, that if no-fault is being pursued as a means of addressing premium costs, then forget it, because no-fault in itself does not reduce premiums.

That's why I say it's unfortunate about this debate, this competition, that there's almost a sense of mutual exclusivity about tort and no-fault. No-fault has become identified with the pursuit of lower premium costs, when that's not the case. It's my view, and I think the view of participants in those Osborne and then Kruger OAIIB hearings, that if you're going to look at no-fault, understand why you're looking at it. You're not looking at it for cost reduction; one should, I submit, be motivated by generating some enhanced fairness for others than innocent victims for whom there is a tortfeasor, but recognize at the end of the day that, in itself, it's not going to generate savings. I think that's a truism. I think that's a given.

At the same time, much has been made and much has been spoken of and will be, I'm sure—and granted that I often share the somewhat Shakespearean view of lawyers that most of the public has—about the role of litigation and the cost of legal fees. But remember this, and I don't think this has been addressed to any great extent to this point, before this committee: The no-fault provisions in both Bill 68 and, more so, Bill 164—because Bill 164, other than the modest pain and suffering, is more of a pure no-fault system, although not a meat-chart system like Quebec. I want to talk about that in a few minutes. No-fault systems are not without litigation costs, and indeed significant litigation costs. Insurers traditionally, before the Ontario Insurance Commission, are using legal counsel to defend applications for mediation and/or arbitration. We have not heard of the legal costs involved, which are ultimately paid by the premium-payer, in the litigation surrounding no-faults.

One of the sad realities of the no-fault systems that were developed in Bill 68 and then Bill 164 is that there isn't as available a regime for payment for plaintiffs' lawyers as there was under the pre-Bill 68 mechanism when the primary focus was on tort. What that means, in my experience, in terms of the incredible number of contacts that have been made with me and certainly in my community through my office, is that a great number of claimants are frustrated in their attempts to attain no-fault benefits by the unavailability of advocates or legal practitioners to act on their behalf to collect data, to collect material and to organize a case.

This is the third attempt, as I've indicated, to revise or restructure auto insurance in the province. Again, I'm concerned because I've been a witness to the manner in which the auto insurance reforms erupted, as they did, I believe, in the Peterson government, in the Rae government and now in this government. Of course, some of us made much ado about the fact that during the course of the election campaign of 1987, under pressure in a scrum, the campaigning Premier of the day said that he had a very specific plan with respect to auto insurance. Again, it's perfectly obvious he sent John Kruger out at great expense to find out what that plan was that he proclaimed himself to have. At the end of the day, we witnessed once again not a drop in premiums but an escalation of premiums. Once again, the last government—and there's no telling stories out of school in this regard—campaigns, and I certainly did and I think every member of that party campaigned, on the proposition of public auto insurance. That government felt compelled, in its particular case, for reasons that it has articulated—not all of which I agree with; there's no two ways about that—to make a decision not to pursue public auto insurance but rather pursued the course that was finally revealed in the nature of Bill 164.

Bill 164, once again, did not control premiums. There's simply no two ways about it. I suspect, to give credit to the minister who was responsible, notwithstanding his initial comment that premium increases would be achieved at a maximum of around 4%, that those were made in good faith. At the same time, the Insurance Bureau of Canada, during the hearings on Bill 164, predicted premium increases of 19%. At the end of the

day, they ended up being far more accurate than were the estimates of the ministry and of the government.

Once again we have, in my view, insurance so-called reform being driven here not so much by a real understanding of the solution, but more so by—as in the case of the last government and indeed the government before it—a compelling need to fulfil a perhaps hastily made commitment during the course of writing electioneering strategy. Of course I'm referring, in the case of this government, to the commitments made during the course of their campaign and in particular documented in the blue book, the so-called Common Sense Revolution, and that was a restoration of tort and a control on insurance premiums. Indeed, at various points in time, there were promises made of reductions in premiums. When we listen to IBC—and this is where there should be some great concern on the part of the committee and all of the province, because when we listen to the IBC, the Insurance Bureau of Canada, talk about Bill—it's unnumbered as yet; I'll call it the new bill—but the new bill generating yet more and regular increased premiums, the contradiction of the IBC by Zurich Insurance and its spokespeople, the second-largest insurer in the province—and I say this to you: Either there is some outright chicanery going on, there's some flim-flamming, some bamboozling going on in terms of a Mutt-and-Jeff routine between the IBC and Zurich Insurance, or Zurich Insurance has to be given some credibility, because as the second-largest insurer in the province, they're certainly in a position—I'm talking about auto insurance—to have a far better handle on the costing of a given scheme, in view of the number of insureds that they have and the experience that they have.

What's troublesome is that there is no actuarial costing of the components of this particular package, and I'm talking about the fact that—and parliamentary assistants, you know that the approach to this sort of thing in the planning process is something of a modular or a block approach. Granted, there are sometimes interactions that generate lesser or greater impacts, but by and large you're talking about components. You're talking about X% of the premium dollar being to pay for this element of benefits, X% being used to pay for this element of benefits. That hasn't been revealed here, and the fact is that at the end of the day the government and the committee members, and in particular the government committee members, are going to be called upon to start dissecting and piecing this thing back together, shaving points off here and there, when in fact there's no familiarity with what those points are.

This is, in my view, an incredibly haphazard way to develop an insurance system, especially when now—and I was critical of Bill 164. One of the reasons I was critical of Bill 164 was that it created yet a new regime here in the province of Ontario, with a new class of victims, at that point there being pre-68 victims—and there are still pre-68 victims. You've heard about them here at this committee because they're involved in litigation that hasn't yet been resolved. There are Bill 68 claimants, there are Bill 164 claimants and now there are going to be new Bill claimants as well, regardless of the form that this new bill takes.

1400

To have embarked, in my view, on Bill 164—and I've got to tell you, there are some people in that government caucus who now feel free to express this view to me as well—was something of an error in that it didn't allow Bill 68 to mature and didn't in effect provide amendments or an appropriate response to Bill 68 that might have provided a better system, but without creating an entirely new class of victims.

Obviously, I'm leading to the proposition of public auto insurance, and I'm going to tell you, Chair, that I am as adamant as I ever was that a public auto—how much more time do I have left, Chair, please?

The Chair: You have five minutes.

Mr Kormos: I'm as adamant as I ever was that a public auto insurance system indeed is the route that this government, indeed this government notwithstanding its philosophy, ought to consider if it truly is going to pursue justice for drivers and for victims.

Look, we've got three western provinces and of course Quebec with public auto insurance systems, none of which have been dismantled by either the Socreds or Liberals or Tories when they held power in those respective provinces, notwithstanding that it was CCF and New Democrats who brought the systems in. Granted, in Saskatchewan they've modified the tort rights so that tort rights are restricted to excess economic loss in excess of no-fault benefits. In Manitoba, they've adopted a Quebec-style meat chart system. In British Columbia, we still have a full tort system with significant no-fault benefits—granted, not as high as those that had existed in Ontario, but darned close to the ones being proposed in this bill, yet with premiums that remain significantly less than in the province of Ontario.

The average premium in 1996 of \$902, in contrast—one of the problems with this exercise is nobody's giving us the straight goods here. Everybody's hiding their light under a bushel and playing their cards close to their chests. We can't get numbers out of the industry. I've got a feeling the industry itself doesn't know the numbers and the fact that they're in such disagreement and internal fractionalism regarding this—compare that to at least the number of \$1,114 for the average insurance premium in 1996, which is the lowest average. It could be as much as \$1,300.

So we've got significantly lower premiums still in British Columbia, notwithstanding that there's a full tort system, healthy no-faults and indeed a driving population that is very similar to ours. Some 2.2 million cars—and much has been made of that, the fact that 2.2 million vehicles can't be compared to six million, but I tell you this: The reality is that with six million vehicles, six million drivers in the province of Ontario, we have yet a larger risk pool and insurance, although some people here can make it very complex, in some respects is very simple. That is, the larger the risk pool, the greater the sharing of risk and the greater efficiencies and economies for the given driver.

The exercise of public auto insurance in Ontario is six million cars and six million drivers, with the opportunity to track not only vehicle owners' histories, but drivers' histories, that is to say, licensed people who aren't

necessarily vehicle owners. It's a very important function and something that happens in British Columbia. That is to say that licensed people pay premiums as well, because the mere fact that you don't own a car doesn't mean that you're not on the road creating a risk, and in fact British Columbia has been eminently successful at generating a bonus-malus system where good drivers pay less, seniors receive an automatic discount, bad drivers pay more and indeed bad drivers in many instances in British Columbia are literally forced off the roads, as they should be, because they shouldn't be even in a Facility Association; they simply shouldn't be driving.

British Columbia has been eminently and outstandingly successful at doing risk management. British Columbia has generated millions of dollars each year in its premium assessment to provide for highway safety programs that come directly out of the insurance system, not out of general revenues, indeed going so far as to getting involved in partnerships with municipalities where, for instance, dangerous stretches of roadway—and there are a few here in the province of Ontario that the Minister of Transportation should be addressing for life and health's sake. The fact is that in British Columbia, unsafe stretches of roadway have been rebuilt, re-engineered, redesigned, repaired, lit, as the case may be, in partnership with municipalities and the Insurance Corp of British Columbia. It's in this way that they've managed to control premiums and maintain high levels of benefits in a way that the private sector here, with its 100-plus providers, simply cannot do.

There have been occasions in the history of the public auto insurance system in British Columbia where there had to have been significant catch-up. The fact is that over the course of the last nine years, there's been almost a 300% increase in the amount of claims paid out for bodily injury, and similarly, almost 300% on the amount paid out for tin and glass for motor vehicle damage, yet the amount of bodily injury has increased in proportion to the tin and glass. There's been some significant savings in the amount of payments being paid out in tin and glass.

I'll tell you that last year there was a 1.75% premium increase in the province of British Columbia; the year before that, 3.2%. Granted, the year before that, there was a significant increase. Some might attribute it to the fact that the New Democrats had not been re-elected yet and that it was a right-wing government running the plan, but I'll not engage in that sort of partisanship. They experienced the same sort of difficulties in terms of having to reassess where claims were coming from, to track records, to track claims and address that with premium increases.

At the same time, as you well know, the Insurance Corp of British Columbia has a rate stabilization fund. Basically, it's a reserve to control for blips on a year-to-year basis, anything from the incident of a major snowstorm which might involve a number of fender benders to other peculiarities, and this rate stabilization fund is a significant part of the system, which helps control and maintain stable rates in the province of British Columbia. It also pays a significant tax, to the tune of 4%, to the general revenues. It, as I said, involves itself in highway

safety and in addressing unsafe road conditions and unsafe circumstances in a way that the private sector industry simply can't do.

I tell you—and I'm terminating—I find myself, again peculiar, in agreement with the Toronto Sun editorial of yesterday. The Toronto Sun suggests that you, Mr Sampson, and the Conservatives should go back to the drawing board. You have been generous enough to make very favourable references about public auto insurance, indicating that if this doesn't work, then public auto insurance might be the only alternative. I tell you, my friend, this is not going to work. Public auto insurance is the alternative. I think I speak for all New Democrats here in the Legislature in saying that we'd be more than pleased to work with this government in creating a public auto insurance system for the province of Ontario and indeed finally achieving the goal of fairness for victims and fairness for premium-paying drivers.

Thank you kindly, Chair.

The Chair: Mr Kormos, thank you very much for the presentation and the history. The history was very interesting.

Mr Gilchrist: A point of order, Mr Chair: I'm just a little concerned. I'm not familiar with the NDP constitution, but I just want to make sure we're not violating any of the equal access rules by allowing one leadership candidate here and denying the others.

The Chair: That's not a point of order.

Mr Kormos: You don't know what Ms Lankin and Mr Hampton have in store for you.

Mrs Marland: Mr Chairman, I have a point of order.

The Chair: Here's another point of order that probably isn't. Yes, Ms Marland?

Mrs Marland: I'm using a lot of restraint right now.

My point of order, Mr Chairman, is this: due to the time having expired, we're not going to be able to ask Mr Kormos questions, but I think, however, it's important for Mr Kormos to know there's no reference to automobile insurance in the CSR whatsoever, so your comments were inaccurate.

The Chair: That does not require a response, Mr Kormos. Thank you very much.

Ms Lankin: It was not a point of order, Mr Chair.

The Chair: It was not a point of order either.

Ms Lankin: You ruled on it in advance.

GEOFFREY LLOYD

The Chair: Dr Geoffrey Lloyd has joined us this afternoon. Mr Lloyd is an author of some repute, I believe. Welcome to the committee.

Dr Geoffrey Lloyd: I would perhaps like to introduce myself to the committee. I'm Geoffrey Lloyd. I'm an orthopaedic surgeon. I've practised in Toronto since 1968. I'm also an associate professor of surgery at the University of Toronto.

I appreciate the opportunity of making a presentation to you. It's going to be brief, addressing two issues. I think I'm going to plagiarize something that I heard Mr Kormos say a moment ago, entitled enhanced fairness. The two issues I would like to address are, first, the definition of a health practitioner and second issue I would

like to address is the implications of the statement "serious impairment of an important physical, mental or psychological function," this having an important bearing on the ability or otherwise to claim for non-pecuniary loss. **1410**

I make this presentation as an individual. I am not representing any organized constituency. I have made available to the Chair a list of my experience in the areas of medical, legal and disability reporting, which does extend over a considerable period of time. I would also claim to have a profound understanding not only of the methods of treating injury to the musculoskeletal system, but the likely outcome following such injuries, given optimum treatment.

As a consequence of treating, evaluating for medico-legal purposes and being aware of the outcome of litigation and mediation processes, I have concerns that the legislation in its current form achieves all that would be intended by its authors.

The first issue I would like to address is the definition of "health practitioner." Here I'm referring to page 9 of the draft. As I review the definitions of the various health practitioners, there is the statement "authorized by law to treat." It would seem to me that in addition to having the authority to treat, it's also necessary for the various health practitioners to have an understanding of the manner in which the injury would normally recover, not only in terms of time but in terms of completeness. In other words, I think the health practitioner should be required to have an understanding of what we call prognosis for the injury that he or she is treating, and what's more, I think this person should be accountable for this prognosis to his governing body.

There's a body of opinion and literature which in many instances is reliable in terms of providing a prognosis. The authority by law to treat is not synonymous with having this understanding of prognosis, and if the committee wishes, during the course of questioning, I can give you a significant number of examples whereby patients have been considerably disadvantaged by an inappropriate prognosis. I can also give examples of situations where funding agencies have been disadvantaged by an inappropriate diagnosis.

I would have the temerity to suggest that the committee might consider amplifying the responsibility of the health practitioner not only to treat, but to also have an understanding of the prognosis, before allowing the victim to embark on extended treatment or a major lifestyle change.

The second issue I would like to address is the issue of serious impairment of important physical, mental or psychological function. I have concerns that this statement does not take future deterioration into account. In my own discipline and in other disciplines, there are injuries from which the patient initially seems to make a good recovery and does not appear to be left with an impairment of an important physical, mental or psychological function. Unfortunately, many years later—and this could be measured in decades—there is a deterioration which, had it been present at the time of the initial adjudication, would have satisfied the definition of "serious impairment of an important physical, mental or

psychological function." By the time this deterioration is recognized, under the present arrangements the ability to recover damages has long since past. Again, if the committee wishes, under questioning I can cite specific examples of these scenarios.

For these reasons, then, I think it would be reasonable for the committee to consider modifying this statement to read "serious impairment of an important physical, mental or psychological function, or the probability of developing such an impairment in the future."

I think this change would safeguard the interests of the patients who initially appear to have recovered well but who in reality have suffered the sort of injury which is going to be subject to further deterioration in the long-term future, which would qualify them for damages under the definition of serious impairment.

I appreciate the opportunity of sharing these two ideas with you and I would welcome your questions.

Mrs Marland: Thank you very much for being here, Dr Lloyd, and for your presentation. I'd like to ask you about this subject of accountable prognosis. I appreciate your raising this question. I think it would be a great deal of concern to any of us, as victims of motor vehicle accidents—which is what we're focusing on in this committee and would apply to any illness or impairment, but this is the subject before this committee—if we felt that we could have prescribed treatment plans without accountable prognoses.

Everyone who's involved in this along this chain, as we are now learning, is a professional, is responsible, and I would hope through their professional training is also accountable. So how do you see us dealing with this question that you've raised? I think it's a very important question. How is that something we can deal with as a government? If a prognosis wasn't accountable or the person giving the prognosis wasn't accountable, wouldn't that be up—I'm going to get a message any minute.

Interruption.

The Chair: We apologize for the interruption. There was a gas leak and it's apparently now corrected.

Mrs Marland: I'm wondering what your advice is to us as to how we can secure accountable prognoses on behalf of victims other than our expectation that the professional bodies and colleges for whom the people making the prognoses belong or are under the jurisdiction of. What else could we do?

Dr Lloyd: I think a number of things. First of all, one could ensure that the person making the statement, by virtue of his background, training and education, had received an education that would allow him to make that judgement. As a practising physician I see examples, and I will if it's appropriate cite specific examples, where the person making statements is either not aware of the literature or, alternatively, by virtue of his background training and education, has not received the training. As a physician, for example, it is mandated by the college that I must know prognosis in my area of discipline. I am not sure that is of necessity the case in other disciplines.

1420

Mr Crozier: Thank you, Dr Lloyd. You're obviously very eminently qualified to give the opinions you have in the areas that you've chosen. I followed your presentation

with interest and noted that when you said you would suggest to the committee that they might consider amplifying the responsibility of the health practitioner to provide a reliable and accountable prognosis before the "victim" embarks on extended treatment, it changed from "patient." Was that an intentional change? If so, perhaps you could explain it for me.

Dr Lloyd: It was partially intentional. As a physician I look upon human beings who are sick as patients. However, I think there are patients who become victims because of an inappropriate prognosis.

Mr Crozier: I appreciate that. I thought there was some significance to what you said there. Also, you said that during questioning you could give some specific examples of conditions that would fit the scenario of "serious impairment of an important physical, mental or psychological function." Perhaps you could give us one in your experience, please.

Dr Lloyd: Yes. For example, if you have the misfortune to dislocate your hip, given optimum treatment it is highly probable that you will for the first few years appear to recover very well. However, it is highly probable that over the course of a decade or two you will develop an arthritis of your hip, which will open up the vista of having all the sorts of treatments that are necessary, and it may well have a profound effect on your lifestyle starting 10, 15, 20 years after the accident.

Mr Crozier: That's in my estimation a good example. If I can recall from a previous presenter who was not a medical practitioner, there was the suggestion that arthritis would not result in the future from what you have described here. I'm going to go back and check Hansard to make sure that's what was being referred to, because it appears to be contrary to what the previous presenter said, and I certainly at this point would say that I would respect your opinion much more highly than his.

Mr Hampton: Just so that I'm quite sure of what you mean, on page 4 you refer to the types of injuries that can result in future deterioration. Can you describe, generally, what types of injuries will frequently lead to future deterioration? Is there a class? Are there a couple of classes of injuries where that often happens?

Dr Lloyd: Yes, there are a number of classes; I can give you two classes. For example, if you damage a joint surface to a degree that in spite of the best treatment it is left with some degree of irregularity, then the probabilities are that you're going to get arthritis.

If you have a fracture to your spine which distorts the mechanics of your spine, it is true that you are, over an extended period of time, going to develop arthritis above and below the area of the damage, which again could have profound effects on your ability to function.

These are two examples; there are others. For example, as football players repeatedly do, if they tear their anterior cruciate ligament, in spite of our technology it is probable that this group of patients is going to develop arthritis in 10 to 15 years. It is not uncommon for a motor vehicle accident victim to tear his anterior cruciate.

Mr Hampton: Let me narrow it down a little further. Whiplash injuries happen frequently in automobiles. In previous incarnations on this same committee, talking about previous approaches to auto insurance, I think I've

heard whiplash injuries mentioned more often than anything else. Is it frequent that whiplash injuries result in future serious deterioration?

Dr Lloyd: Given the narrow definition of whiplash injury, which is usually synonymous with soft-tissue injury, then there is no fundamental reason why these patients should deteriorate in the long term. One would expect them to recover in a two- to three-month time frame. There is no pathophysiological reason why they should not.

Mr Hampton: Just to go to your second point, you differentiate between the authority by law to treat and having an understanding of prognosis. In law and in terms of medical responsibility, how do you define having an understanding to give a prognosis? What, in medical terminology and/or legal terminology, differentiates these?

Dr Lloyd: I can only speak as a physician. As a physician, I have an obligation to have a knowledge of a prognosis. This is based on experience but principally on literature, on medical literature, and I have an obligation to give a prognosis which conforms to the general consensus of opinions. If I don't do that, then I am accountable to the College of Physicians and Surgeons. I am suggesting that the other disciplines should have that level of accountability, because I am seeing prognoses given which do not correspond with the consensus of medical opinion.

The Chair: Thank you very much, Dr Lloyd. We appreciate your presence here today.

Dr Lloyd: Thank you for your time.

The Chair: There's been a request for a five-minute recess, and perhaps when we come back we could discuss the motion brought forward by Mr Crozier. Since our first presenter this afternoon was not present, we would then be back on time.

The committee recessed from 1428 to 1435.

The Chair: Did you wish to say something about the motion, Mr Sampson?

Mr Sampson: Yes, Mr Chair. As I said when we broke just before lunch, we're prepared to work with this particular motion. There are a couple of changes I think we need to do to deal with the technicalities of what's being proposed. It would seem to me appropriate that the research officer would provide us with the summary of kind of who said what during the committee process, and that should be available to us—I'm not buttonholing him, but it should be available to us shortly after, I would expect, when we—

Mrs Marland: Friday morning, after we finish at midnight on Thursday?

Mr Sampson: Well, whatever.

Interjection: A week.

Mr Sampson: It requires a week? All right. Then based upon that, it would seem appropriate for the various caucuses to recommend to him what should be in a recommendation note to this committee. It's going to be hard for him to be able to capture what the recommendations should be unless, based upon what we see, who said what to whom type of thing, we know what to grab from that, so to speak, and then that would be the basis upon which he would prepare a draft report that we would

review when we came back, reconvene that week the House opens. I'm just trying to work out the logistics of how the research officer gets a handle on recommendations without getting some direction, frankly, from the various sides of the table here. Of course, we can't provide those recommendations until, I think, we've had a full summary of what's been said. So I'm kind of going back a bit here.

It would seem, if I could, Mr Chair, that Mr Crozier's motion might be modified slightly to suggest that we receive this summary of who said what a week after our last day next week, and then each caucus would submit back, I guess through the clerk—I'm sort of winging it here—our recommendations as to what we would like to see in the draft report that the committee will prepare. Then we will meet Thursday of the first week back, which I think is the 21st, if my numbers are right, to review that report. Ms Lankin's shaking her head.

Ms Lankin: It's a very difficult time frame. There are members of this committee who are also working on the report that will be coming back from the pre-budget hearings and we'll be spending a couple of days, the same week you would have us reviewing and meeting with caucus and developing recommendations, we'll be dealing with the report writing on the pre-budget.

Mrs Marland: Oh, that's right, the Monday and the Thursday of that week.

Mr Sampson: No, the report from the clerk wouldn't be back till actually the Thursday of that. You'd be over your pre-budget stuff, and then there's a two-week gap, frankly, before we come back for that week, if I remember the calendar correctly.

Ms Lankin: One week.

Mr Sampson: Is it one week?

The Chair: The week of the 11th.

Ms Lankin: I'm just suggesting that's a difficult time frame. The week of the report writing is also the week that all three caucuses will be holding caucus retreats, so it'll be subsequent to that. I'm not sure about caucus schedules, but I don't believe there is a caucus meeting scheduled for that week immediately before the House comes back, and there will be much business the first week.

Mr Sampson: Do you want to roll it a week ahead?

Ms Lankin: That would be helpful in terms of the week that the committee meets. The second week that the House is back would be helpful.

The Chair: The 28th?

Mr Sampson: There are some technical problems in how that backs up the process in dealing with other items. I just want to clarify something. The day that the report from the research officer would be available on who said what would actually be the 7th, which is the Thursday of the week we're all in our various caucus meetings.

Ms Lankin: The Thursday of that week, and then the following—

Mr Sampson: So it's the 7th.

Ms Lankin: Yes.

Mr Sampson: And then we would come back into the House—

Ms Lankin: On the 18th. And the point that I'm making is that week in between is a week where, for example, we do not have a caucus meeting scheduled.

Mr Sampson: Oh, I see.

Ms Lankin: We will have had the two-day retreat on the 4th and the 5th, as will you.

1440

Mrs Marland: But, Frances, if I can help, it's the 4th and 7th that we are writing as a committee. We are meeting to write the report on the pre-budget. The difficulty, I think, for all of us is the fact that we are dealing with two reports here, one committee writing two reports.

But in fairness, if I can be helpful, Mr Sampson, Andrew is very experienced and I'm sure he's doing his usual excellent job of accumulating the input from the deputations as we are going along day by day. I think we should ask Andrew about how soon after we complete the hearings next Thursday in Ottawa would he be able to present us individually as caucuses with an overall summary of the submissions, because that's the benchmark from which we start, I think.

Ms Lankin: In fact, for me, while I appreciate you attempting to be helpful, that is not the benchmark. I think if Andrew can produce it sooner, that's fine. I wouldn't want to put him under a strain to try and get it out earlier, because it doesn't change my basic problem. On March 4 and 5, your caucus is in a caucus retreat, ours is, and I'm not sure about the Liberal—

Mrs Marland: The 5th and 6th.

The Chair: The 4th we're meeting here.

Mrs Marland: Right.

Ms Lankin: Yes, the 5th and the 6th, I'm sorry.

Mrs Marland: Right.

Ms Lankin: So the 4th and the 7th of that week we're doing pre-budget. So whether the document comes down or not, I have no opportunity to review that, to prepare recommendations and to meet with my caucus. It will not be an item imposed on a caucus retreat agenda which has already been set. So it won't be until the first week the House comes back, March 18, that I'd be in a position to deal with it with caucus. So I'd appreciate it if you could look to some time the second week.

Mr Sampson: The 28th would be the next available date. Is that an available date for scheduling, Mr Chair?

The Chair: Yes, it is.

Mr Sampson: Well, maybe that's the date we'll have to stake off.

Mrs Marland: Is it Thursdays that you normally meet?

Mr Sampson: Thursday the 28th is the day we would reconvene to review the draft report and finalize it. We would only have one day to do it, but I suspect we might be able to come to some conclusion then.

Okay, if it worked back from that day, when is it that we would expect to be sending caucus recommendations to the research officer, the week before that? That would be the 21st, and then we get something from the research officer with respect to a summary of events by March 7.

Mrs Marland: I think Andrew should be able to speak.

Mr Sampson: Yes.

Mrs Marland: Is that okay with you?

Mr Andrew McNaught: Yes.

Mrs Marland: So we're talking about having the report on what has taken place coming from you on the 7th, and then the formulation of the input from the three caucuses, we'd get back to you by the 21st, and then Andrew presents to the committee what he has drafted as the report on the 28th.

Mr Sampson: Correct.

The Chair: Is the committee in favour of these arrangements? No one being opposed, thank you.

NORTH YORK REHABILITATION CENTRE

The Chair: We'll now welcome the North York Rehabilitation Centre. Thank you very much for joining us today, gentlemen.

Dr Rocco Guerriero: My name is Dr Rocco Guerriero. I'm the president of the North York Rehabilitation Centre. I'm a licensed chiropractor and associate professor of orthopaedics at the Canadian Memorial Chiropractic College. With me today is my partner, a medical physician, Dr Howard Platnick.

Thank you, Mr Chairman, ladies and gentlemen, for this opportunity today in allowing us to address some of the important issues of auto insurance reform. The purpose of our talk is to give you some insight into the designated assessment process and provide you with our comments and suggestions about the proposed draft accident benefits schedule.

Just to give you some background, the North York Rehabilitation Centre is one of the five medical and rehabilitation designated assessment centres, or DACs, in the Metropolitan Toronto region and one of 28 in Ontario. Since we started doing DAC assessments on January 1, 1994, we have performed a large number of assessments. Recently, we became designated as a residual earning capacity DAC, which seems like we won't have much business in the future.

There are four different types of DACs, and I hope you understand the difference between them; the two main ones are the medical and rehabilitation DACs and the disability DACs. It's important to understand the difference between the two.

The purpose of the DACs is to provide impartial and independent medical and rehabilitation assessments for the Ontario Insurance Commission to facilitate dispute resolution. We primarily evaluate the necessity and reasonableness of the proposed or ongoing medical and rehabilitation services and/or other goods and services. We adhere to conflict-of-interest guidelines provided by the OIC. Each assessment is assigned various health care experts who can best answer the question being asked by the insurer. So if there's a question on social work, for example, we'll have a social worker and/or psychologist as part of the assessment team evaluating that particular benefit.

I'd like the reader to refer to the proposed draft accident benefits schedule. This is a little bit dry here. I've made some recommendations. The first one is with respect to who is eligible for a rehabilitation benefit. This is just a minor change that I suggest. I suggest to you to

change the word "disability" to "impairment." Insurers commonly ask us, "Why does the insured need rehabilitation if they're back to work?" There are cases where the insured has an impairment, they're working, but they should still have a right to be rehabilitated. They may require just a short-course, self-directed, modified rehabilitation program in order to make them independent in their pain management and reintegrate them back into their pre-accident lifestyle. We agree that the \$75,000 as a maximum is more than reasonable. We suggest that this amount should exclude case management fees and assessment fees.

Another point—it's a minor point, but I think it's important—is expenses of visitors. Right now it reads "impairment." I think that should be changed to "catastrophic disability." This will minimize the number of cases potentially claiming this expense. As it reads right now, it invites the immediate family to visit any accident victim, even the ones who have sustained a minor injury.

On page 29, with respect to limit on fees, it presently reads that the fees should not exceed the "maximum amounts established for each service under the professional fees schedule published in the Ontario Gazette by the Ontario Insurance Commission." I am not aware of this present fee schedule. A number of representatives, including myself, from the DACs had a meeting with eight of the major auto insurers in Ontario and we discussed a recommended fee schedule for these designated assessments. These were partly based on hourly rates recommended by our respective professional associations. I feel that the present fee structure should be maintained and that it is reasonable, as it is a combination of our current hourly rates and the complexity of the case. If there are any subsequent changes, the DACs should participate in future negotiations with the auto insurers.

On page 34, with respect to application for payment of medical and rehabilitation benefits, this proposed change will give the insurer the right to evaluate the reasonableness and necessity of a rehabilitation plan. This is an excellent change which should realize effective cost savings. As a DAC assessor, we see numerous cases where the insured has already participated in one or many rehabilitation programs and has already incurred costs of over \$10,000 by the time they come and have their DAC assessment. In many cases, these rehabilitation programs have produced no objective, effective results and may have been unnecessary. Any ensuing dispute will be sent to the appropriate designated assessment centre.

1450

The next point is an important issue with respect to many of my colleagues being chiropractors and physiotherapists in the province. This has to do with minimum expense for physiotherapy and chiropractic treatments. The proposed change attempts to minimize the required number of treatments to be paid for by the insurer prior to a DAC assessment. In my opinion, this proposed change allows too few treatments for the average insured person and may compromise their health care. It now reads that the insurer shall pay a minimum cost for 15 physiotherapy or chiropractic treatments and/or six weeks, whichever is less. I would propose this be changed so that the insurer shall pay a minimum cost for 30 basic

physiotherapy or chiropractic treatments and/or six weeks of basic care, whichever comes first. This term "basic" is important, as it will reduce costly active rehabilitation programs and/or multidisciplinary programs in the very early stages of recovery; for example, the first four to six weeks.

Basic chiropractic or physiotherapy treatments, on average, may cost the insurer anywhere from \$30 to \$35 per session for a passive treatment. Passive treatment is reasonable in the acute stage of soft-tissue healing. Active chiropractic or physiotherapy treatments can cost the insurer anywhere from \$60 to \$150 per session. Mild, uncomplicated soft-tissue injuries should fully resolve with basic chiropractic and/or physiotherapy treatments.

Another important issue during the assessment stage is the continuation of care. It is my opinion that basic to intermediate chiropractic or physiotherapy treatment should be continued during the designated assessment phase. However, these basic health care treatments should be limited to, I propose, three times per week at a fixed daily rate of \$75 maximum, for example, per session, depending on the nature of the treatment, whether it's passive or active, to a maximum of \$2,000 and/or eight weeks, whichever comes first. This will provide the insured with basic health care needs without incurring increased costs of functional restoration programs or multidisciplinary active rehabilitation programs during the designated med/rehab assessment period. This continued care should be paid at least until the date the insured and the insurer receive the DAC report. Insurers commonly complain to us that they're being billed \$150 per day during the assessment period. The insured and their provider should be notified and advised that they do have a limit for med/rehab expenses during this assessment phase. This proposal that I'm making will make both parties more accountable to the system. It is less adversarial and the insured will not feel like they're being cut off prior to the assessment.

The next point is also an important issue. The DACs have been successful in compiling a consortium of experts in multidisciplinary settings. The DACs have offered peer review, which optimizes fair and unbiased assessments. This like-assesses-like concept should be maintained and continued in the assessment process; for example, chiropractors should evaluate chiropractic treatments, dentists should evaluate dental treatments and psychologists should evaluate psychological treatments. This eliminates any political bias with respect to treatment protocols. This has been successful in the present DAC system.

On page 40, another point which I think is important is that it presently reads, "The insured person shall submit to any reasonable physical, psychological and mental examinations...." I propose that you add the word "functional" in there. Legal representatives commonly block and interfere with functional capacity evaluations, and sometimes the whole DAC appointment gets cancelled because of this. Functional capacity evaluations are necessary to evaluate functional impairments, not in all cases but in certain cases, and will provide us with additional objective data.

With respect to the establishment of DACs, I would recommend the committee grandfather the existing DACs. The request for proposal, selection and accreditation process is very costly and cumbersome. The recommended committee governing DACs should consist of representatives from the lay public, insurers, health practitioners and the DACs themselves. It is important to have some input from the designated assessment centres.

In my opinion, there is a wide variance between insurers and how they handle their claims. One way to standardize the system and minimize costs would be to have mandatory periodic DAC assessments. This could be done at the six-month and one-year marks; this one-year mark should be standard and mandatory. This will prevent inexperienced insurers from letting the files get out of hand. We get some files at the 23rd month for an assessment.

Finally, as a small point:

"When duty does not apply

"(3) Subsection (1) does not apply if compliance with subsection (1) would be detrimental to the insured person's treatment or recovery."

The word "detrimental" is open to interpretation and may invite numerous claims from their respective health care practitioners to prevent participation in an active rehabilitation program. They should be sent to a med/rehab DAC for an evaluation.

In conclusion, overall the proposed draft on accident benefits is a progressive and positive step towards cost containment of medical and rehabilitation services. It's my understanding that medical and rehab costs the average person 30% of their rates, and 20% is disability benefits. So I feel that the proposed changes by Mr Sampson and his government will achieve some of these goals.

In my opinion, the DACs are providing unbiased and independent assessments. We have been key to cost containment in the system. We are in a unique position as we see all three sides; we see the insured, the insurer and the insured's provider. When one of these three parties becomes unreasonable, a DAC referral results. Even after the DAC, if one of these people is still unreasonable, then dispute resolution will still ensue. We provide the necessary balance and put the reasonableness and necessity into the system.

I hope our suggestions have been helpful to you and I thank you for the opportunity to present today. If you have any questions, Dr Platnick and I will be happy to answer them to the best of our ability.

The Acting Chair (Mr Steve Gilchrist): Thank you, Dr Guerriero. We have two minutes per caucus for questioning this round.

Mr Monte Kwinter (Wilson Heights): Dr Guerriero, at the North York Rehabilitation Centre is 100% of your patient load as a result of DACs or do you have those who are there for an assessment and those who have come in because they have their own personal problems?

Dr Guerriero: We have a multidisciplinary centre and part of our service is treatment. So we have chiropractors, physiotherapists, massage therapists and psychologists. A big part of our business is treating patients, and we have a lot of experience in treating patients in car accidents

and work-related injuries and just general patients. The other side is doing the DAC assessments or independent assessments.

Mr Kwinter: The reason I'm asking you, and this isn't meant to be in any way derogatory or anything else, but the experience most people have is that if you go into an auto body shop and you want to get a repair done, the first thing they say to you is, "Is this an insurance claim or are you paying for this yourself?" There's a two-tier system. I'm just wondering, is there a two-tier system in a rehabilitation centre? Do you walk in, and if you're part of a DAC, there's one fee? Because you said you weren't aware that there was a fee schedule that had been gazetted. I was just curious to know if there's a two-tier system depending on who's paying for it.

Dr Guerriero: Each professional has the recommended fee schedule and we all adhere to it. You're not supposed to charge different fees for different types of patients. We charge the same fee whether the patient has been involved in a car accident or a work-related injury or is a normal patient. What I was referring to is the fees for assessments in the DACs; that's what I was referring to. Speaking of fees, DACs do not cost \$6,000; an average DAC costs \$1,500. So that comment made yesterday was quite inflated. The amount of people who are assigned to an assessment depends on the complexity of the case. The example given yesterday was a disability DAC; it wasn't a med/rehab DAC. If you look at the definition of impairment, that includes physical, functional and psychological, and in certain cases you have to rule out a psychological impairment.

The Acting Chair: The questioning will move to the third party.

Ms Lankin: You're referring to the lawyer who showed us a copy of a referral to a DAC that included a psychologist, kinesiologist, physiotherapist and an orthoped, I think, in that range.

Dr Guerriero: That's correct.
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Ms Lankin: There are two issues that I want to address quickly, one with respect to fees, just talking about the professions and their fee schedule for certain services: We've heard from the insurance industry that they suspect, at least, that they're being charged differential rates when it's under insurance, and they're asking for a fee schedule—not for assessments, for medical treatment, med-rehab services—to be regulated and published. So I'd like your comment on that.

Secondly, this really does get at one of the things the insurance industry at least is saying, which is that many of the costs they have found which have been driving up premiums are found within the burgeoning med-rehab world. We think there are some reasons for that in that people weren't getting adequate rehabilitation before and it's an important focus. But from your experience at a DAC, what are you seeing? Is there a lot of abuse by practitioners in this area, or by counsel? Do you turn down a lot of treatment plans? Do you have any idea why there is so much pressure of growth in cost in the med-rehab area, and beyond treatment plans, how we can fix that problem?

Dr Guerriero: With respect to fees, it is unethical for us to charge a different fee for an insurance case. We adhere to our college's fee schedule. But motor vehicle accident patients sometimes do have more complex injuries and they do have more baggage, so you do have spend more time with them in certain cases, and that extended time may be reflected in the fees.

Some of my suggestions do talk about basic care and rehabilitative care, which is a lot more costly, but we have excellent rehab programs in Ontario, we have excellent chronic pain management programs, excellent functional restoration programs, and it's multidisciplinary. And multidisciplinary does cost, and it is necessary in certain cases.

With respect to what we're seeing, that figure of 90% may be skewed, because we have been sent cases at the two-year mark or 18-month mark and they've already had five rehabilitation programs and that's one of the reasons why they may have been rejected. But some of the programs are time-limited. In some of our recommendations we put time limitations and/or offer alternative treatment. The treatments aren't just rejected. If a patient does have a residual physical impairment or psychological impairment, we address and give them the tools to try and become more independent in their pain management and try to reintegrate themselves back into their pre-accident lifestyle.

There is embellishment in the system. It happens with patients, with providers, and some of it is genuine and some of it may not be.

Mr Wettlaufer: Dr Guerriero, I was in the insurance business a long time, and one of your recommendations here makes so much sense it isn't funny. You say: "The insured and their provider should be notified and advised that they do have 'a limit' for med-rehab expenses during this assessment phase.... This is less adversarial."

I can remember many, many years ago, when insurance companies used independent adjusters, that there was a less adversarial position taken than there seems to be now, and maybe I'm playing the devil's advocate here for a second, but I'm just wondering if we haven't replaced the expense of independent adjusters with the expense of DACs and rehab specialists and a whole lot of other things.

The DACs presently are seen by a lot of the witnesses who have come forward as not necessarily being impartial, that the insured looks upon it as having been appointed or imposed on him or her by the Ontario Insurance Commission. You're suggesting that we maintain the existing DACs. Can you elaborate on that?

Dr Guerriero: The present system is as impartial as it could be. Nothing's a perfect scenario. We see things from two sides. We see the insured, we look at the file documentation, sometimes we see surveillance, so you get two sides of the story. And we do have a responsibility. We are accountable if there is a residual physical or psychological impairment. In our own conscience, we have to make sure that they get the proper care they need in order to get them back to their normal lifestyle. It doesn't mean continuing passive treatment for their pain management on an ongoing basis and getting 0% better.

Mr Wettlaufer: The \$75,000 benefit as a maximum being reasonable, and you said that this amount should exclude case management fees and assessment fees: Do you mean that the \$75,000 should not include case management, ie, the benefit shouldn't include case management, or that any costs for case management and assessment should be over and above the \$75,000?

Mr Guerriero: What I'm saying is that medical-rehab benefits shouldn't include case management fees, surveillance fees, assessment fees. These are all things that are ordered by the insurer, and they shouldn't be taken out of the insured's purse.

Mr Wettlaufer: Great. Thank you very much.

The Acting Chair: Thank you both for taking the time to make a presentation today. We appreciate it.

ONTARIO ASSOCIATION OF COMMUNITY-BASED BOARDS FOR ACQUIRED BRAIN INJURY SERVICES

The Acting Chair: Our next presentation will be from the Ontario Association of Community-Based Boards for Acquired Brain Injury Services. Good afternoon.

Mr Robert Thompson: Good afternoon. My name is Robert Thompson and I'm the chairman of the Ontario Association of Community-Based Boards for Acquired Brain Injury Services. To my left is Wesley Brown, who's our director of public policy. To his left is JoAnne Davis-Zulik, who's the executive director of one of our member agencies, Brain Injury Services of Hamilton. To her left is Adam Wegman, who's a board member from one of our member agencies, Peel and Halton Community Access Services.

We're an association of charitable agencies representing survivors of traumatic brain injury and their families. These agencies are all run by volunteer boards of directors from all walks of life in the various communities.

It is our association's view that the proposed legislation is a great improvement over earlier consultation drafts. However, we do have some recommendations for improvement. At this point, I'd like to turn to Wes Brown, our director of public policy, to outline those.

Mr Wes Brown: As is probably apparent from what Bob just said, we are experts in brain injury rehabilitation. We're not experts in automobile insurance. But we thought that it was important to come before the committee to give you that service provider perspective, because of course brain injury is very much interrelated with the insurance system, at least for our clients.

In this province, approximately one half of the traumatic brain injuries are the result of motor vehicle accidents. It's also a fact that the vast majority of these victims are young people between the ages of 16 and 34. One of the consequences of that is that these victims still have very long life expectancies, 35 to 50 years, typically, and it's a fact of brain injury, unfortunately, that in the severe and catastrophic cases, and often in the moderate cases, the consequences and costs of brain injury are lifelong.

In our view, when a victim suffers a brain injury in an automobile accident, certain costs become unavoidable. In an untreated situation, these costs are costs of family

breakdown, incarceration, lifelong chronic institutionalization and of course elevated expenditures for health care throughout that person's life.

In our view, there are two overriding issues: The first is the reduction of these costs, and the second is the allocation of these costs in the motor vehicle context between the insurance system, the victim and the taxpayer.

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With respect to the reduction of the costs of brain injury, rehabilitation is crucial. Successful rehabilitation—and believe me, rehabilitation is very complex in this area—can significantly reduce the total costs of a brain injury, and in many instances, with good rehabilitation brought to bear at an appropriate stage after the injury, a person can return to gainful employment and a certain level of community reintegration, resulting in a substantial saving of the overall consequences of brain injury.

The second issue, of course, is the allocation. Hopefully we've reduced the systems with appropriate rehabilitation, properly funded, brought to bear at the right time. The question still is, who pays for that, the insurance system, the victim or society and the taxpayer?

Turning briefly to our submission, there are three points that we just really want to highlight for you. The first has to do with the timing of rehabilitation. We know, and it's well documented in the literature, that the outcome of rehabilitation is dramatically improved if good rehabilitation is brought to bear at a period of time of about 12 months to 24 months after the injury. It doesn't have to be brought to bear immediately after the injury, although obviously there are a lot of cognitive things going on in the health care system to stabilize the person, but in terms of community reintegration, that type of rehabilitation, there has to be a stabilization of the medical conditions and also a certain stabilization of the brain functions before a proper long-term assessment can be made.

One consequence of that is that we strongly feel that in terms of reduction of the overall costs of brain injury, a mechanism must be put in place where good rehabilitation is accessible and funded at the appropriate stage: we believe, on average, between 12 and 24 months after the injury is sustained. Sometimes it might be nine months, but on average, in a second year after the injury, if we can get good rehabilitation funded for the victim, the long-run total costs will be reduced.

The second point that we make is the definition of "catastrophic" injury. I believe it's well documented professionally that the Glasgow coma scale is not at all a good predictor of the outcome of a brain injury, and if we use a scale that is not a good predictor of outcome, then it is very likely that the rehabilitation that clicks in based upon an inadequate measure is going to be inappropriate and that what we really need is measures that are accurate in the victim's long-term prognosis so that the best rehabilitation program can be designed and properly funded.

The third point that we wish to make has to do with the total of the \$2-million limit and the allocation of that between medical and attendant care. In the severe, and usually in the catastrophic case, \$2 million is unfortunate-

ly not sufficient over the person's life expectancy. Whatever limit you choose, if you choose a limit, it's important to recognize that to the extent that the limit is established, any costs over and above that become the public's cost and the taxpayer's cost.

Secondly, with regard to the \$1 million for the medical-rehab and \$1 million for attendant care, we believe that that lacks flexibility. We can easily see situations where there will be very substantial arguments as to whether a particular course of treatment was medical or attendant care, particularly in this area, because it's very grey as to when it's attendant care and when it's medical-rehab. It seems to us that it would be much more efficient in terms of reducing the total costs associated with brain injury that that distinction, at least particularly in the case of brain injury, not be made, so that we don't have the arguments as to whether "You've exhausted your medical-rehab dollars and what you want is a medical-rehab expenditure," whereas the victim is saying, "Well, no, it's attendant care." You're going to have a lot of arguments with respect to that, all of which really comes back again to the allocation of these unavoidable and unfortunately very substantial costs between the insurance system, the victim and the public.

I've brought with me to help to answer any questions Adam and JoAnne, who are in the front line in the assessment and treatment of brain injury. We'll be happy to answer any questions you may have.

Mr Hampton: My question is a general one. It really concerns the last page of your submission, the conclusion. Do you have a sense of any global figures or do you have a sense of the liability that may be left for the Ontario public to pick up? You say:

"To the extent that a TBI victim's care is not covered by benefits, insurance or the victim's personal resources, the government of Ontario will be obliged to pay for the direct costs of care (medical rehabilitation and attendant care), chronic hospitalization care and for indirect costs such as dependants, costs to the correctional system and other societal costs."

Do you have a sense of how this impacts, for example, on the corrections system? Do you have a sense of these things, because I think it's very important.

Mr Wes Brown: If you're asking me dollars, I don't have a sense, and unfortunately the public accounts aren't kept on a basis where you can pull that information out. But a lot of the clients of the agency I'm on the board of and have been for 15 years come from chronic care, where they have been sometimes for eight, 10, 15 years. We're able to do something with them, but had they received treatment early on, they would have had a much better success of real, meaningful community reintegration, so there have been all those costs in the chronic care system.

One of the unfortunate consequences of brain injury is that the brain loses its ability to filter out inappropriate social conduct. So unfortunately crime among victims of brain injury is quite common, and sexually inappropriate behaviour is quite common, because this is one of the consequences of the brain injury. They no longer understand or are able to determine what is appropriate and what isn't appropriate. Many brain injury victims develop

very severe psychiatric problems. It's quite different than other types, because they remember and they can sense what their previous life was, and suddenly their life is completely changed. They can't understand many things but they're very frustrated, they know they could do them before, and psychiatric problems become very, very severe.

One of the interesting things about brain injury is as you get into the rehab and a person starts to improve, they become depressed because they begin to appreciate even more the deficits which they're under, so the treatment has to be ongoing. Eventually, over a period of time, they overcome that, but if you withdraw the service prematurely because, for example, the insurance fund has run out, the person may be at a very critical stage where they are prone to depression, and suicide and suicide attempts are very common among brain injury victims.

Of course, these are serious consequences for the victim, but also for the families. There's a tremendous degree of family breakdown among the victims of brain injury, because your father went to work this morning as one individual and when you saw him next, after he got out of the hospital, he's a completely different person, a completely different personality. The breakdown in the family and the consequences associated with that are enormous. Part of a good rehabilitation program also involves the education and counselling of the family to cope and bring the family back together in a mutually supportive way, which again helps reduce the total social costs associated with the injury.

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Mr John Hastings (Etobicoke-Rexdale): Could one of you elaborate in your brief on what you call undocumented or exorbitant and unnecessary institutional care costs if there is not highly preventive rehab instituted immediately after a brain injury occurs? Second, do you have any such database that we could get for the committee? My third point, how would you structure the payments for these sorts of individuals where they're not considered or in your brief not deemed to be in the catastrophic category?

Mr Wes Brown: I think I can answer some of your questions. Certainly we would be very happy to provide the committee with the statistics we have. When we talk about the exorbitant institutional costs, there's a tremendous waste when the taxpayers are spending several hundred dollars per day for a person in a chronic care institution when if that person had been subject to some good rehabilitation early on after the injury—as opposed to, say, \$250-a-day, a \$75-a-day adult service provider. On a per diem basis, over that person's life expectancy, it is exorbitant.

One of the main goals of rehabilitation is not just to help restore quality of life but to bring these costs under control, to get some community reintegration and to reduce the demands on the institutions, whatever is in this province, such as the prisons, the chronic care hospitals, the psychiatric hospitals and so forth.

Ms JoAnne Davis-Zulik: If I could interject here, the cost to the government has been enormous in sending people out of country for rehabilitation, and that's another instance where if we had had the dollars up front—when

there are dollars available for rehabilitation, people are able to get early and effective treatment here. Otherwise, they often have been sent out of country, and that's very costly.

Mr Hastings: We have made an attempt to restore brain injury treatment to Ontario.

Mr Wes Brown: That's correct.

Ms Davis-Zulik: Which is welcomed.

Ms Castrilli: I'm interested in the section of your brief that deals with the flexibility of coverage. You spend some time indicating where the deficiencies are. I wonder if you'd have any suggestions as to how you could make the coverage more flexible for those victims who aren't the most serious or catastrophic, who are the ones you're addressing.

Mr Wes Brown: One of the things I prefaced my comments with was that we're experts in brain injury, not experts in insurance and how to structure payments. What we know, though, from our perspective is that funding, even for the moderate to severe, has to be available at the right time. If it is, the long-term prognosis and the long-term costs will be greatly controlled. They won't be eliminated, but they will be greatly controlled and they'll be a lot less than what they otherwise would be.

In your deliberations and as the Legislature ultimately deals with it, if it turns out that the allocation of the cost responsibility can't be determined until two years or three years, if you're going to a partial tort system or a tort system or whatever, by all means, still make provision for funding at the appropriate time and when you do allocate the responsibility, then you make the adjustments between the payers, the public and the insurance and so forth. But get the money flowing at the right time, even if you haven't determined—

Ms Castrilli: So your issue isn't quantum, it's just timing. Is that what you mean?

Mr Wes Brown: Mainly timing, because if you don't get the rehabilitation going at the right time, we've lost a huge opportunity.

Mr Kwinter: In your presentation you talk about the Glasgow coma scale. We've had several presentations by people associated with traumatic brain injury, and I think everyone acknowledges that is used at the emergency department. Unfortunately, the insurance industry uses that as their benchmark, and if it's 9 or above, they rate them.

I have two questions. First, you're suggesting that the Glasgow outcome scale is a more reasonable one, and what I'd like to know is on what time scale? How long does it take to get an effective evaluation using the Glasgow outcome scale?

Second, the other thing that has happened throughout these hearings is dispute about the definition of "traumatic" or "catastrophic." For example, in your presentation you talk about a moderate disability being catastrophic. I would suggest that some would say: "It's a moderate disability. How can you possibly categorize that as catastrophic?" Could you give me an explanation of that?

Mr Wes Brown: Joanne's an executive director. She's on the front line. She can talk about it.

Ms Davis-Zulik: On your first point about the outcome scale, we don't do that type of assessment ourselves, so to look at all the grey areas involved in predicting outcomes and the sort of multidimensional evaluations that are necessary would take more time than we have here today. We would welcome the opportunity to speak more fully to that issue. The fact remains that we need something to predict outcomes, not to measure level of colour.

The other issue of "catastrophic" and what we've seen working in the trenches with people is that while an injury may initially be deemed mild or moderate, if rehabilitation is not provided, the effects of that injury become catastrophic, and that's where the family breaks down, the job breaks down, people don't return to work. Things pile up and it becomes much more catastrophic than it would have been had rehabilitation been available and had the appropriate services been in place. That's why "catastrophic" is in quotations. The injury itself may not have been; the effects will be, if there aren't appropriate—

Mr Adam Wegman: If I can also add a point to that, the word "moderate" is the term used by the people who developed the Glasgow outcome scale and may be an unfortunate use of the term, when we're trying to compare "catastrophic" on the one hand and "moderate" on the other hand. But "moderate," from my understanding, and I am not a professional in this area, but the information I have is that it means capable of travelling by public transportation themselves and working in a sheltered environment with supervision.

If any of us sitting here were in those circumstances, we might well turn around and say, "That's catastrophic and it has a catastrophic effect on our lives." We are stuck with the terminology that's used in the outcome scale which says "moderate," but it's by no means what I think this committee would think of as moderate if it affected any one of our lives.

Mr Wes Brown: If I could make just one last point on that, all of our agencies, when we assess, we don't use one scale, one test. Indeed all of our assessments, and we all do assessments for arm's length third parties as well, are on an individual-by-individual basis, a very holistic, multidisciplinary approach, not a single formula, although we recognize that you've got certain limitations in designing a public insurance system that you have to work with.

One of the things we will offer to Mr Sampson or his staff is to make available some of the front-line people who are involved in the assessment to talk to his staff on a detailed level in an area of assessment that's very difficult and very complex, to help develop an appreciation of some of the measures of brain injury and outcome prediction. So we make that offer.

The Chair: Thank you very much. We appreciate that, and thank you for appearing before the committee today.

ALFRED KWINTER

The Chair: We now welcome Alfred Kwinter to the committee.

Mr Alfred Kwinter: Thank you very much.

Mr Monte Kwinter: Just for the record, Alfred and I are first cousins. Our fathers were brothers.

Mr Alfred Kwinter: Yes, we are.

Mr Monte Kwinter: He disclaims me and I disclaim him, but it's okay.

The Chair: That was going to be my first question. We have 20 minutes to share together if you would like to proceed, Mr Kwinter.

Mr Alfred Kwinter: First of all, I'd like to thank the committee for giving me this opportunity to appear before you to make these submissions. I am yet another plaintiff's counsel. As my paper indicates, I'm a partner in the firm of Singer, Kwinter, which has been around for umpteenth years. I've practised exclusively in the area of personal injury litigation for 15 years, perhaps a little more. I've lectured on the subject on numerous occasions and have spoken and taught at the bar admission course etc.

I know the issue that I'm going to discuss has been discussed before—I just happened to catch the hearings last night—but perhaps what I'm going to say is worth repeating. I want to address principally the proposed \$15,000 deductible in this legislation on pain and suffering awards and also to speak about the consequences of what has happened with the verbal threshold.

My position to the committee would be that this deductible is first of all totally unnecessary, and secondly it's far too high. I know you've heard that before.

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The tort system, as we knew it prior to June 1990, for motor vehicle accidents created a level playing field for the little guy, so to speak. Those are the types of people that my firm acts for. We act for the typical plaintiff, the fellow who's the warehouseman or the lady who's the chambermaid at the hotel. They're injured in a car accident, they can't work any longer, they're off work, they've got a home perhaps that they've struggled for some years to buy and they find themselves incapacitated as a result of an accident.

There's no bigger battle for an individual than to take on a large corporation. The only bigger battle might be perhaps to take on the government. The tort system allowed someone to go into court and with a good lawyer, and we are very fortunate in Toronto to have a strong plaintiff bar, a person could go in and take on a corporation and it would be as close as you could get to a fair fight. No doubt, that's what Mr Harnick has in mind when he's proposing contingency fees and class action litigation: letting people go in and fight fair.

That system had many flaws and many abuses. We all know that. For the most part, the system was plagued by minor accidents and minor claims that insurance companies, as somebody indicated yesterday, were throwing money at to settle at great cost. We're finding that the cost was in fact crippling to them. It was as a result of those types of claims, I would submit to you, that there was a cry for change because premiums were rising and the Liberal government brought in Bill 68.

Once they brought in that legislation with a verbal threshold—you know at the time an injury had to be permanent and serious and physical in nature—that playing field was no longer level. Suddenly many plaintiffs could not take the risk that they could take earlier.

Suddenly there was a barrier put in front of them that their injury had to reach a certain level, and if the injury didn't reach that level they were out of court. It produced such a level of uncertainty that I can tell you in numerous cases people with very legitimate injuries had to be told, "Mr and Mrs Jones, if you lose this case, you could lose your house because of the very drastic cost consequences we have in our system." Many people feel that if you go to court and you lose, you just pick up your marbles and go home. When you tell them that the loser pays the costs and that it could end up wiping them out, they're stunned to hear that. That's what the verbal threshold did.

Numerous very deserving plaintiffs were stopped at the door. But it did develop a body of case law. Going back to the well-known case of *Meyer v Bright*, we now know, however, what "permanent and serious" meant as it was contained in the Liberals' legislation.

The NDP Bill 164 changed that to some degree and it improved it. In certain areas they introduced the claim for psychological, which was missing in Bill 68, and it also removed the requirement of permanence, which was a very needed amendment. But again, the threshold was there, and you have a body of case law now that tells you what type of injury you must have in order to take it forward. Members of the committee, the cases show that the injury has to be of significant seriousness. Minor cases just won't fly. That really, in my submission to you, solved the problem of the small cases clogging the system.

Why then, I have to ask, given what it takes to achieve an injury which meets this threshold and given the great risks involved, once someone has an injury that meets that test, is it then necessary to impose a deductible on that injury? What you're doing with a \$15,000 deductible is you're taking injuries, first of all, which are serious. To attain \$15,000 in damages, as I'm sure you've heard before from people sitting in this chair, one has to have a very significant injury. Insurance companies don't throw money at people and certainly they don't throw out \$15,000 very easily. If one reaches the level of seriousness that the proposed legislation sets out, which is similar to Bill 164, you already have a serious injury to get there.

The problem is, a person having a serious injury is in danger of having his damages assessed at no more than \$15,000, or possibly \$20,000 or possibly \$25,000. You have to have a pretty serious injury for that type of assessment. Why then, having reached the verbal threshold, should the insurer be able to come along and just wipe that person out and say, "Well, yes, the judge has decided that you do have a serious injury and the judge has decided that you do meet the threshold, but unfortunately, Mr Jones, your award is zero." Why is it necessary to chop at both ends?

If the verbal threshold eliminates the injuries that were clogging the system, if the verbal threshold, as we now know from the body of case law, is tough to get to from the Court of Appeal decision in *Meyer v Bright* and numerous other cases that have come out since then, why do we then need the deductible? In my submission to you, members of the committee, it's a double whammy to the plaintiff.

The problem of course is, and I think this has been mentioned before, that when you set a deductible at \$15,000, you're not just stopping \$15,000 claims; you're stopping claims in the \$20,000, \$25,000 and even \$30,000 range. When you're talking about \$25,000 claims, you're talking serious fractures, you're talking possible spinal surgery cases, you're talking possible open reductions on people who have metal inserted into their limbs; you're talking serious cases. Why should those cases be shut out? And they will be shut out, because if you say to somebody, "Even if you reach the threshold, the jury may not give you more than \$30,000 or \$35,000," you're going to shut those people out.

So the people are already shut out to a large extent because of the risks involved in reaching the threshold; if they reach the threshold they're shut out once again. We know that injuries are assessed based on periods of suffering. The old story is that the one-year whipper was worth \$5,000 to \$6,000 or to \$7,000, and you've heard this before, two years is worth maybe \$8,000 or \$9,000; once you get to \$15,000, you're talking about a minimum of three years of suffering or more. Why should a person who has suffered for three years, members of the committee, be asked to in effect write a cheque back to the insurance company, and for what reason?

In my submission, the threshold as it stands in your proposed legislation does what it is required to do. The case law is clear. Minor cases cannot go forward. Cases have to be significantly serious. In my submission, the deductible is unnecessary, and if anything, it is far too high. If I was to be asked what the deductible should be if there has to be one, I would submit that \$7,500 will get rid of your nuisance, minor cases. Those were the cases that were clogging the system. Even at \$10,000 you're talking a significant injury. Thank you.

Mr Dave Boushy (Sarnia): The whiplash, which is between \$5,000 and \$7,500, what happened to it under Bill 164? Were they still claiming it?

Mr Alfred Kwinter: No. Under Bill 164, your injury had to be serious; it no longer had to be "permanent." But the way "serious" has been defined by the courts in the decisions that have come down ever since *Meyer v Bright*, we now know that there has to be a very major change in one's lifestyle, in one's occupation or in one's career path to meet the test of "serious." Under Bill 164 and Bill 68, all those minor whippers were basically thrown out, so that is no longer a problem. That's why I don't understand why you need the \$15,000 deductible. One gets the very strong feeling that whoever prepared this legislation never worked in this field, with all due respect.

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Mr Boushy: In answer to my question, there are no whiplash injuries at all claimed under Bill 164?

Mr Alfred Kwinter: You will see very few. I would suggest to you that you will see very few one-year whiplash injuries being claimed for tort. It wouldn't make any sense, nor would any lawyer who does this type of work take on any such cases, knowing that (a) there's a \$10,000 deductible and (b) that it wouldn't meet the test. You'd be dismissed on a motion.

Mr Sampson: Thank you for your presentation. I'm having a bit of difficulty following the logic of your statement that you gave to us just as you were closing that if we had to have a deductible, \$7,500 would do. If I could paraphrase you, if I can remember what you said, it would cut out the nuisance claims.

Mr Alfred Kwinter: Yes.

Mr Sampson: But then I thought throughout your presentation you were telling us that the verbal threshold was cutting out the nuisance claims.

Mr Alfred Kwinter: It does. The verbal threshold does cut out the verbal claims, but what happens is that there's a tendency, when you have a deductible, for claims to become inflated. Everyone seems to take the deductible into account when settling claims.

Mr Sampson: Then you shouldn't be terribly fussed about any deductible, if that's the case.

Mr Alfred Kwinter: Well, no. In my submission, I think the plaintiff bar feels that a \$7,500 deductible gets rid—the insurance companies were throwing \$5,000, \$6,000, \$7,000 at the minor cases just to close them out. Once you got over that barrier, you got into the more serious stuff. I think a \$10,000 deductible wipes out a lot of valid cases. I'd say \$7,500 has to be the absolute max. That's where you're getting rid of the one-year types of cases and those are the ones that were plaguing the insurance companies: the six-to-nine months, the 12-month whippers. Have I helped you there?

The Chair: Time's up.

Mr Sampson: Yes, you have, but the Chair cut me off anyway.

Ms Castrilli: Mr Kwinter, I'd like to raise an issue, which you peripherally addressed in the beginning, of legal fees. We've had some considerable testimony primarily by insurance companies that have said one of the reasons that premiums have been high and will continue to be high, right now in the range of 7% or 8% per year which is forecasted, is because of legal fees. The figures they cited were that in 1987, before no-fault was introduced in Ontario, 41 cents of every dollar was spent on legal fees, and that if we take into consideration contingency fees that may be coming in, that increase which is forecasted in the rates might in fact be higher, going to double digits, and this is blamed primarily on legal fees and contingency fees. I wonder if you as a member of the practising bar, and you've been at this for a long time, might comment on those two propositions.

Mr Alfred Kwinter: I have a great deal of difficulty understanding how 41 cents out of every dollar can possibly be spent on legal fees. As all lawyers practising in this area know, first of all when a claim is settled, an award is usually attached to that for legal fees and it rarely exceeds 15% of the award. The balance of that fee is paid by the plaintiff, by the client. Insurers don't pay legal fees based on prejudgment interest. In fact, it's a negotiated fee. We heard the same thing before Bill 68 came in, that legal fees were driving the system. We said, "If that's the problem, legislate legal fees," but we heard nothing in response to that. I can't see that legal fees in any way, shape or form are driving up the cost by any considerable extent. They hardly ever exceed 15%.

Ms Castrilli: And contingency fees?

Mr Alfred Kwinter: Contingency fees do exactly what I indicated at the beginning. They allow the little guy to come into court. If contingency fees are contingent on the outcome, then it's the client who is prepared to pay that fee if the lawyer is prepared to take on the case. In my submission, that's strictly between the client and the lawyer. That shouldn't be cutting into the insurance company's share. They're still going to pay their 15% costs, or whatever it is. That's strictly between the client and the lawyer. No one is telling the client they have to retain a lawyer on that basis.

Ms Castrilli: In your view, it should not affect rates.

Mr Alfred Kwinter: It shouldn't affect rates. Contingency fees should have absolutely no bearing on rates whatsoever.

Mr Hampton: I want to go into a bit of history, since you indicated early on that you've been around this debate for a while.

Mr Alfred Kwinter: Yes, I have.

Mr Hampton: It was my understanding that when Bill 164 was first proposed, going back a few years ago, what was proposed was strictly a \$15,000 deductible—no verbal threshold at that time; in the initial stages it was a \$15,000 deductible.

Mr Alfred Kwinter: That might well have been the case.

Mr Hampton: There was some concern that deductible was too high, and as I understand it, lawyers like yourself reached an accommodation with the government and with insurance companies that the deductible should come down to \$10,000, but that there should be the verbal threshold language in the legislation. Is that your general recollection of how things happened?

Mr Alfred Kwinter: I recall that's how it happened. I recall being very concerned that there was again the double whammy. I didn't understand why, when you had that verbal threshold—you see, it's one thing to have a threshold like in some parts of the United States where you have to have X number of dollars in medical bills, but the courts have set this threshold so high, the Court of Appeal has told you the type of injury you have to have, that there is really no need for the deductible. I certainly was surprised the NDP brought in both the \$10,000 plus the verbal threshold plus suing for economic loss. What the consequences of that will be we don't know because the time period is just coming up for those claims.

Mr Hampton: My memory, though, is that was the accommodation that was reached: The value of the deductible would come down from \$15,000 to \$10,000 and in exchange there was an agreement that there should be a verbal threshold. Now, if this proposal goes forward, it goes back to the \$15,000 and there will still be a verbal threshold. I guess I see your point. You really are getting a double whammy and it's the worst of all worlds. If we remove the deductible at this time, you're saying now that there is legal meaning to the verbal threshold, there will be no problem.

Mr Alfred Kwinter: That's right.

Mr Hampton: That's essentially it?

Mr Alfred Kwinter: If you bring forward a \$7,500 case or a \$10,000 case, which is basically a one-year

whiplash, you'll be motioned immediately on a dismissal based on the case law. You just will not be able to bring those kinds of cases forward because the courts have said how serious the injury has to be.

The Chair: Thank you very much, Mr Kwinter. We appreciate your input into the committee.

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ADVOCATES' SOCIETY

The Chair: We now welcome the Advocates' Society to the standing committee.

Mr Graham Dutton: My name is Graham Dutton. To my left is Philippa Samworth. We appear to make a joint submission on behalf of the Advocates' Society. For those of you who are not familiar with it, this is an association in Ontario that is composed of over 2,000 lawyers and they deal with the resolution of disputes in every form, every court, every tribunal throughout this province. One of the mandates of the society is to initiate appropriate reforms in the legal system and to comment upon specific acts of the Legislature.

A great number of our members practise in the personal injury field, both as plaintiffs' counsel representing accident victims and as defence counsel representing insurers. A large number of our members also appear before the Ontario Insurance Commission on a regular basis. As such, we believe we can bring to this committee a perspective that deals in an objective fashion with both the concerns of those who are injured in motor vehicle accidents and the insurers who must respond to those claims.

Of course, these are not the only stakeholders. All those who pay premiums are stakeholders as well. It therefore seems to us that it is a question of fairly balancing the concerns of all of the above, the victims, the insurers, the policyholders, to produce a fair and reasonable automobile insurance compensation system which is both affordable and promises price stability.

It's Thursday afternoon, the last day of a four-day session of committee hearings. I'm sure you have heard from more than one speaker the two last attempts to reform automobile insurance by the Liberal government under Bill 68 and by the NDP government under Bill 164. I do not intend to go into this in any detail. I will say that Bill 164, by denying the right to claim economic loss, totally denied the right of innocent accident victims to recover their full economic losses.

This is in contrast to the promise made by Premier Harris to bring back the right to sue for significant economic loss. We, the members of the Advocates' Society, believe this promise can be kept and at the same time provide a fair and equitable system of providing compensation which balances the legitimate concerns of the policyholders, the accident victims and the insurers.

If this point had not been brought out by earlier submissions, I think it important to note that approximately one half of the premium dollar goes to the payment of physical damage claims; that's to say, the cost of repairing motor vehicles. It seems to us, and I'm sure to you, that it is almost an immutable law that the cost of repairing cars, with all their electronic components, will always go up and never go down. Therefore,

the balancing of interests I mentioned can only be achieved by using one half of this dollar. Within that one half, medical, rehab and other costs, as you are aware, I'm sure, have also escalated, but this may not be immutable and indeed ought not to be.

You have already received submissions from the Canadian Bar Association, the written submission of John McLeish of the Ontario Trial Lawyers' Association, and Stephen Malach, among others. We have had the opportunity of reviewing all of these submissions, and in the main the Advocates' Society supports those positions. At the risk on this Thursday afternoon of giving this committee some information overload, we would like to deal briefly with those submissions we feel should be addressed by this committee, the government and the Legislature.

Economic loss: The right to sue for 85% of economic loss is not, in our opinion, the right to sue for "significant economic loss." Consider the following:

Prior to June 22, 1990, this right had always existed for victims of motor vehicle accidents in this province.

Other than at-work accidents covered by the Workers' Compensation Act, every victim in every accident in this province has the right to sue for full economic recovery; that is to say, in slip-and-fall cases at a store, on a sidewalk, wherever; product liability cases; boating accidents; medical malpractice cases and so on.

In jurisdictions with comparable legislation to this, such as in the United States, the right of innocent accident victims to sue for full economic loss is not restricted or circumscribed.

The reduction to 85% of net income is contrary not only to the common law principle of placing the accident victim in the same position he or she would have been had the accident not occurred, but is also contrary to the basic concept of fairness, particularly when one realizes that contingencies will already have been deducted by the trier of fact at trial before the imposition of this cap.

Contingencies, as I have described, are those that are always taken into account at a trial by a judge or a jury for the possibilities of what could happen to that person. The person, he or she, could lose their job because it's been terminated, because they are fired, because of a recession, because of any number of things, as a result of which, contingencies are always taken into account to reduce whatever the present value of that future economic loss is. This imposes another reduction on top of the first reduction, and I think that's important and cannot be overstressed.

Lastly, and I suspect to everyone most importantly, the cost of restoring the right to sue for significant economic loss is, we believe, significantly less than what perhaps some members of this committee may have understood it to be, and can be in our opinion easily achieved by implementing some, for instance, but not necessarily all, of the recommendations contained in the submissions of Mr Malach.

With respect to the right to sue for the loss of dependency arising out of fatal accidents, the right to sue for loss of future earning capacity and the right of students or those currently between jobs, we understand that changes will be made in the legislation to reflect that

these rights have not been extinguished. If indeed this is not the case, we would obviously file written further submissions on that issue.

Ms Philippa Samworth: Turning to no-fault benefits: As Mr Dutton mentioned, the Advocates' Society endorses Mr Malach's paper, and you've already heard from Mr Malach. There's little doubt that tighter controls to combat waste and fraud can only have a beneficial effect and impact on the cost of insurance. We're not going to deal with the specifics of the changes, but there are a couple of points we'd like to make.

First of all, we refer you to studies that have been done in Quebec and elsewhere which question the effectiveness of treatment or rehabilitation for mild to moderate soft tissue injury, which is the most common injury arising from a motor vehicle accident. We highly recommend that the committee explore and review these studies. We believe that most medical personnel recommend early, brief, but intensive series of rehabilitation treatments, such as physiotherapy, with an early return to normal activities. This type of approach produces the most positive results and is cost-effective.

Secondly, as lawyers and as members of the Advocates' Society, we must take strong exception to the comments of David Corey, which were reported in the Toronto Star on February 21 under "Insurance Changes May Hinder Care, MPPs Told" where Mr Corey stated, "Lawyers often discourage their clients from participating in meaningful rehabilitation prior to trial in order to augment the size of the future lost income claim."

Mr Dutton and I have over 50 years of experience between us in the area of personal injury, and I won't tell you who bears the lion's share of that. This has not been our experience and it is not to our knowledge the practice of lawyers with whom we work.

Alternative dispute resolution: We believe that the proposed neutral evaluation process that has been proposed for no-fault benefits is flawed.

Firstly, the referral to neutral evaluation should be on the consent of both parties and not made unilaterally by the mediator. The person conducting the neutral evaluation should be agreed upon by the parties and not chosen at the whim of the director.

Secondly, as the neutral evaluator is, in this legislation's schedule, to provide his or her report to the arbitrator hearing the case, it is our view that an open and meaningful discussion of the parties' positions will be unlikely in this process. In the back of the participant's mind will be the knowledge that the positions they take at the neutral evaluation will ultimately be reported to the arbitrator, and this can result, in some cases, in the parties taking unrealistic positions.

While we support mandatory mediation of the tort claim, we believe there should be one session of mandatory mediation, irrespective of whether the statement of claim has been issued or not. Experience, and particularly my experience at the commission, of mandatory mediation of accident benefits tends to suggest that mandatory rather than consensual mediation in tort claims will result in cost savings through early resolution.

The interface: We simply agree with our colleagues at the CBAO and the Ontario Trial Lawyers' Association

that the problem of the interface must be dealt with and we offer our assistance to you in that regard.

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Mandatory structures: We do not believe these are necessary. The Courts of Justice Act allows a judge, in his or her discretion, to impose a structure. This is appropriate because the judge will have heard all the evidence, know the circumstances of the case and can make a reasoned decision as to the appropriateness of the structure, keeping in mind the evidence they've already heard. A mandatory imposition of a structure will in some cases create an unfair result, such as when a small business owner, who by reason of injury has lost his or her business, wishes to use the proceeds of the judgement to re-establish him or herself and a structure would prevent them from doing so.

Lastly, the deductible: You've heard a great deal about that, but it is the Advocates' Society belief that contrary to some expectations shared by the members of the insurance community and the members of both preceding governments, that the imposition of a threshold in Bills 68 and 164 has not resulted in an erosion of that threshold, but rather a genuine reluctance, shared by most if not all plaintiffs' counsel, to run the risk of incurring the expense of bringing an action, where the assessment would be above but close to the threshold. The effect of raising the threshold merely exacerbates this trend, thereby increasing the size of the class who will be denied the right of recovery for pain and suffering. These victims, many of them members of the voting public, we believe, will carry with them only a painful reminder of the accident and nothing else.

Mr Dutton: What do all parties want to achieve? I think I can use the word "parties" in its political as well as its larger sense. Simply put: A good product at a fair price; a product that stops the double-digit escalation of insurance premiums, notwithstanding the increase in the physical damage aspect of the premium dollar, and that creates stability in the market for the purchaser; a product that is fair for accident victims, both those at fault and those not at fault, and that recognizes the distinction between them.

If we at the Advocates' Society would ask one thing from this committee or from the government, it is that you cost how much will it cost to implement some of the changes we have discussed and suggested and only then, after costing, make up your minds.

We would be more than willing to provide any assistance which you may require in this ongoing process, and would be pleased to respond to any questions any member of this committee might have.

The Chair: We have time for a very short round of questions. Could we start with Ms Castrilli. A minute would be nice.

Ms Castrilli: A minute, oh dear, I have so many questions. Let me focus on one area then. Under the revisions to no-fault benefits, you allude to some studies in Quebec. I wonder if you might elaborate on the substance of those studies for us.

Mr Dutton: I think Ms Samworth has more knowledge of that than I.

Ms Castrilli: It'll have to be brief.

Ms Samworth: I'll be as brief as I can. There were some extensive studies done in Quebec which have been reported, and I'd be pleased to provide you with a copy of that report, which deal particularly and almost primarily with injuries to the neck. The studies dealt with the efficacy of the treatment that was received and the results achieved through that treatment. The quick response is that the main result of that study was that drugs, physiotherapy and much of the chiropractic treatment, in general things that we see, are not effective on a long-term basis, only on a very short-term basis, and the most important thing in these mild to moderate cases is to get the person back to work, and treatment is contraindicated to that. It lends itself to the perception of disability.

Ms Castrilli: I'd be delighted to receive the study.

Ms Samworth: I'll send it up to the committee.

Mrs Marland: I think we'd all like it.

Ms Samworth: I will send you 30 copies.

The Chair: If you send them to the clerk, we'll make sure they're distributed. Thank you very much.

Mr Hastings: Mr Dutton, I wonder if you could provide this committee with some further documentation on page 3 dealing with restoring the right to sue. When you comment that significant economic loss may not be as significant as the public perception is led to believe, do you have such documentation you could provide this committee with?

Mr Dutton: Not at this time.

Mr Hastings: At a later date?

Mr Dutton: I have some approximation, yes. I will have that information and can do so.

Mr Hastings: Can you elaborate at all on an average cost-per-case basis, what that might be, ballpark, even, from your own experience?

Mr Dutton: No, I couldn't really respond to that question in that manner. I can certainly tell you that the cost of restoring the right to sue is reflected in the cost to those that purchase motor vehicle insurance as an addition to the premium dollar. It is more than offset by taking some of the reforms that ourselves and other submitters have suggested, so that this balance can be achieved. Those figures, as to the cost, will be available very shortly. And I would be only too happy to make those figures available to the committee. I'm thinking they should be available within the next few days. I had actually hoped to have them for this presentation, but unfortunately couldn't get them.

Mr Hastings: Thank you very much for your remarks.

Mr Hampton: I really want to ask you a question that pertains to the point made by the earlier presenter. You deal with it but in a very general sense. The earlier presenter said that moving the deductible from \$10,000 to \$15,000 was going to be most unfair. And then he made the point that really a deductible is not necessary at all any more, because the courts have essentially determined what's serious and what's not, so you don't have to deal with that issue. Do you want to delve into that?

Mr Dutton: I am sure we can both respond. I'll respond briefly and then I'm sure Ms Samworth has got some comments. No matter which way you cut it, the injured victim ends up with less money than had there not been a deductible in place. But what we are saying is

that, contrary I am sure to the expectations of the insurers and indeed other parties, that when the deductible was imposed, it was anticipated that there would be an erosion of that limit as determined by the courts. In fact, it simply has not happened in our experience, as a result of which, if you have a \$10,000 deductible, effectively those that have cases that are worth around that and perhaps more, won't take them to court because the risk is too great.

If you increase the deductible, you increase the size of the class that's simply not going to be getting any recovery. Yet you're then getting into the area, with a larger deductible coupled with the oral threshold, where the more serious injuries that can pass the threshold are still not going to be advanced to court, because of the implication and the imposition of the deductible. There's not enough money and the risk is too great.

Ms Samworth: If I could just comment very briefly, I know we're out of time—the combination of the verbal threshold and the deductible works to keep out the claims that should never be there in the first place. If there were no monetary deductible, some people may consider themselves to qualify under the threshold, and they may very well fill up the system with efforts to make their claims.

The fact that there is a monetary deductible discourages them from doing that because their recovery would never be at that level, but at some point, the deductible gets too high and discourages proper claims that should be either before the courts or recovering through the settlement system.

The \$50,000, in our view, is just too high and it eliminates some claims that validly should be allowed.

The Chair: Thank you very much. We appreciate your presentation from the Advocates' Society today.

COLLEGE OF CHIROPRACTORS OF ONTARIO

The Chair: We now welcome the College of Chiropractors of Ontario. Welcome to the committee.

Dr Leo Rosenberg: I'm Dr Leo Rosenberg. I'm the president of the College of Chiropractors of Ontario. With me is legal counsel, Linda Bohnen. On my far left is a public member of the College of Chiropractors, Carole Conti from the Markdale area, and from Hamilton, Dr Roberta Koch. Roberta is the treasurer.

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I realize that you've had a long few days here. I've been following it on television, and it reminds me of the chiropractic truism that your concentration level is about very relative to your sacroiliac comfort level. So I realize you've been sitting for a long time. I almost feel like getting up and starting a fitness class here, but that would be considered rehab and we can't afford that.

Mrs Marland: We'd enjoy it, though.

Dr Rosenberg: You would enjoy it. We do not want to read you a brief because we know you people can read. What we do want to do is to focus on a few ideas and handle your questions. The College of Chiropractors is one of the disciplines which is part of the Regulated Health Professions Act and the Chiropractic Act and our function is onefold: It is to govern, in the public interest, the administration of chiropractic services. We are one of

six authorized to communicate a diagnosis by the RHPA and one of five authorized to use the title, "Dr." Our expertise is neuromuscular skeletal: basically nerves, muscles, bones and the locomotor system and how it effects your health.

This has been the centennial year of chiropractic and I have to say that, having practiced for 35 years, I'm very proud of what transpired during this last year. What transpired was a validation of the effectiveness and the cost-effectiveness of chiropractic care. I'm taking this opportunity to give you a little commercial, but I will say that as such, we have seen that patients can be prejudiced against for choosing the most cost-effective care. The reason we are here and the reason that we literally harangued a few people to be here, namely the clerk and Mr Sampson's office, is because we believe that the public has a right to the most cost-effective care, whether it be paid for by auto insurance or by OHIP or any other third party.

The evidence validates that the public is served well with this care and we would ask you to consider these recommendations. If you look at the brief, you will see that under section 3, there are simplifications of our recommendations. If I may just very briefly not follow those, but just to say that we'd like to see the language changed: that instead of the word "treatment," "services" be used. It's very simple. Is a diagnosis or an assessment or an X-ray a treatment? Not usually in a chiropractic office. As you know, an X-ray could be a treatment in a radiologist's office, but in order to cover the gamut of chiropractic service—and really most of the other professional services—we would suggest that you change the word from "treatment" to "services."

We would also suggest that coverage become immediate from the time of consultation—I think it has to be elaborated—from the time of consultation: If a patient has an accident of January 1995 and they see the chiropractor in July of 1996, then they've had their six weeks time period. So we would like to see it specified that their coverage become immediate and an allowance of 14 days to submit the treatment plan.

One of the problems you have to realize is that textbooks have described, in soft-tissue injuries like whiplash, those first 36 to 48 hours are the golden hours. That is the time the patient should be advised what to do, what not to do, and treatment should be started immediately. Most of the research supports that evidence.

Coverage should continue until an independent DAC is completed because you, as a patient—a patient could be cut off treatment when, indeed, what it will do is interrupt their treatment until they await a DAC, until they await the assessment. And what would happen, then, if the patient is almost ready to go back to work, they're cut off treatment, they can't go back to work, it ends up costing more money in the long run and more disability and more pain and more suffering.

A DAC should include the same health care practitioner. It's inappropriate to expect a chiropractor to make a judgement on a brain surgeon and it's inappropriate for a brain surgeon to make a judgment on a chiropractor.

Finally, I'll just say that we must have timely dispute resolution. The patient cannot be without care. I must say

that the issue of the Quebec study was mentioned. The Quebec study is one of numerous studies that are available and it has to be taken in context, not out of context. I'm sure other members here will discuss that.

I can only tell you, and I'll summarize, that not very long ago in terms of my practice life, Merrijoy Kelner, Oswald Hall and Ian Coulter did a study for the University of Toronto, faculty of medicine, division of epidemiology. It was called *Chiropractors: Do They Help?* It was a national investigation which cost, even then in 1980, over \$1 million. What they found, very simply stated, was that of patients who consulted a chiropractor, 76.8% had medical care for that same condition, 22% had had physiotherapy for the same condition and about 92% expressed satisfaction with their results.

We believe it's in the interests of the public to see that chiropractic care is made available, and is made available without prejudice. If there's any way that you can create a study of what is cost-effective—and that's the real nutshell here: What is cost-effective care? I watched people here in the last few days make presentations and I question going to a fancy restaurant with a lot of dishes, very little food and paying a big bill. I question the efficacy and cost efficacy of some of the rehab services and I ask you to question that. I think you will have to in order to answer the question of what you're going to pay for, how soon and for how long. Again, we would gladly offer our assistance in further studies.

I would ask our public representative, Carole Conti, to make a comment, and with that, we'll entertain your questions thereafter.

Ms Carole Conti: Members of the committee, I'm a public member at the College of Chiropractors. As our president said, we are regulated under the RHPA, which ensures that the public receives helpful and safe professional health care. It also ensures that the public has access to the services they desire. I would like to just put that into your mind, that we must not under any circumstances, in any way, stop that freedom of choice for the public that they can go to any health professional they desire and that they have access to the care they need immediately. A service should not be delayed because of a piece of paper. A piece of paper can always be produced, but someone's good health cannot.

Also, I don't know if Dr Rosenberg mentioned that within the college itself, we are mandated to come up with standards of practice, guidelines; we have a complaints and discipline process. So if there are any areas where the public or the insurer has questions about chiropractic care, they have a place to take their beefs, so to speak. That's all I have to say at the moment.

Ms Lankin: It's a pleasure to see you again. If you have been following the hearings, you'll know that we've heard from lots of folks, certainly a number of different health care practitioners, some of whom have argued for the efficacy of physiotherapy or for occupational therapy or vocational rehab, which is outside of the regulated health professions. We had a medical doctor here today who talked about the need to make sure that the professional is competent in terms of prognosis and held accountable for that prognosis. We've had folks from outside the practitioner field being concerned about huge

numbers of rehab centres springing up and whether or not, in a sense, the system was getting ripped off by too much good care, or perhaps not enough good care and just excess care.

I wonder what your advice would be to this committee, because it's very difficult for a group of legislators to sort through what have been, I would almost say, perennial turf wars that have existed between various professions. Yet, we can also see the value of multidisciplinary teams, and when they do work together, the increased value to the patient.

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We've heard about the Quebec study, and that's something I'd like you to comment on. We've heard about the need to have standard treatments. We have ICES, which is doing epidemiological work in terms of peer review of medical treatments, we have the Manga report with respect to chiropractic, but we don't have a lot overall, in terms of when a patient first comes in, how they should be assessed and the appropriate provider be selected and the appropriate treatment. Can you give us some advice on that?

Dr Roberta Koch: I'll try, with the help of my colleagues. As the College of Chiropractors, we're not interested in turf wars, of course. We are interested in governing chiropractic in the public interest. We can tell you the difference legislatively between the professions, but I'm sure you know that, and Leo has already described that.

As far as evidence of effectiveness when it comes to the injuries you're dealing with under the Automobile Insurance Act, the Quebec task force dealt with short-term studies only and it came up with an affirmation of early active intervention as an effective approach to motor vehicle accidents. Early active intervention included what chiropractors do via adjustment and manipulation. There is no evidence concerning long-term care at the present time; not that it's not effective, but there doesn't appear to be any evidence regarding long-term effectiveness. So the Quebec task force just dealt with short-term care and affirmed that early active intervention is in fact effective.

As you know, with low-back conditions there are volumes of evidence, and the volumes of evidence include the Manga report, which is the Ontario government's study that was a third-party look at what's effective in care of low-back conditions, and of course chiropractic was seen to be cost-effective. We also have third parties saying the same thing. The Agency for Health Care Policy and Research out of the US and the UK guidelines say the same thing as the Manga report said. These are all very credible bodies that verify the effectiveness of chiropractic care.

It's hard to look at cost-effectiveness on the evidence, because there is little evidence. I think what will help this committee is to encourage a guideline standards process. We at the CCO have recognized that and we're in the process of developing guidelines and standards for rehabilitation. I think that will go a long way to promoting cost containment. As Carole said, we have a complaints and discipline process and we would encourage that to facilitate complaints to colleges regarding abuses of the system.

Mrs Marland: I have a couple of questions, one coming off a presentation this morning by the Ontario Medical Association. I'll just read it very quickly: "Many physicians provide physical therapies like manipulation to their patients. We recommend that physicians be added along with physiotherapists and chiropractors in section 42(6) of the accident benefit regulation."

I asked the OMA if they felt that was based on the ability of every physician—I'm paraphrasing what I said because it has been a long day and I can't remember exactly the wording. What I was getting at was that there are general practitioners in medicine, as there are in dentistry and any of the health sciences, and most of them will not go into something that is specifically a specialty. I referred to the fact that chiropractors go to school for six years to learn one thing—I'm generalizing when I say "one thing"—compared to physicians who have to learn a whole lot of things in a six-year period in order to come out and be general practitioners. I just wondered if you would like to give your opinion; I'm not suggesting a turf war. I'm talking about a professional opinion from your point of view.

We keep hearing over and over about the necessity for early intervention. I'm wondering if you can tell us, because I don't think any of us here are professionals in health care or have been—my feeling about treatment is that the sooner I get to it, especially if it requires a series of treatments, which perhaps physiotherapy and chiropractic treatment might fall under, the greater my recovery and the less damage is done while I'm waiting for the recovery. This is purely in layman's terms. So I'm wondering if you have any idea how much longer the treatment can be for a lot of these accident victims because they didn't get started early enough and therefore the cost is greater; that's the point.

Dr Koch: To the first part of your question concerning a physician's manipulating, as was said before, CCO is not interested in turf wars, and the only reply that would be politically correct would be that 95% of manipulation is done by chiropractors. We know that. That answers that question.

Ms Lankin: It is within the scope of practice for them. There are some who are trained to do it.

Dr Koch: Yes. RHPA has given the licence to act—it's not called manipulation; it's the definition of manipulation to chiropractors, physios and medical doctors, but 95% of manipulation in Canada is done by chiropractors.

To the second part of your question, the only evidence that exists out there concerning neck injuries, which is the Quebec task force, is that early active intervention is appropriate and the best venue for an injured party. Other than that, you can't say anything about what the evidence shows because there is no evidence pertaining to anything else. Leo talked about the golden hours of an injury. It stands to reason that advice given in the first 36 hours is crucial.

Ms Linda Bohnen: I'd just like to add that the questions you're asking I think are indicative of the fact that it's really a multifaceted problem to which unfortunately there's no quick fix. Every profession has to establish standards of practice that are real and make sure that their practitioners adhere to them. Unless we're

prepared to abandon the principle of freedom of choice of practitioners, accident victims will go where they want to go and ought to receive the most cost-effective treatment wherever that is, and that has to be worked on on a number of fronts.

Mr Monte Kwinter: I've been sitting here for four days now and I am getting more and more to the point where I think we have an absolute conflict in the presentations that are here. A lot of the presentations that are made by organizations like yourselves I think should be made really to the Ministry of Health, under OHIP, to say, "We should have the ability to deliver this kind of thing." We're talking insurance, and when you have insurance and insurance has to be rated and priced, the only way that an insurance company can do that is to say, "What is my risk?" If it's open-ended like OHIP is, then I have ultimate risk, and who wants to be in that business? I may not survive the first year because it is totally open. So what I have to do is, what is the most reasonable package I can put together that will service the greatest need at a certain price? Price is driving this whole exercise.

The question is, how do you do that? You raise the question, should it be 16 visits or should it be 16 weeks or whatever it is, and all of that drives the cost. The insurance company is saying: "If you want me to price it, tell me what I'm pricing. If you're saying to me price it with no cap, no open end, how can I price it? I'm not going to be in the business." I think that is one of the major problems we have in this exercise and I would love to get your reaction and if you have any solutions to that.

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Dr Rosenberg: My response, if I may, Mr Kwinter, is that we're not saying to open it without checks and safety measures. We're saying we should have standards, and we have them, and the CCO is in the process of making those things law. We're saying that there should be DACs and that those DACs should involve chiropractors and that the patient should not be prejudiced, but that it isn't open-ended. If the DAC says no, then no is no, so that the insurance company would have the benefit of some form of veto in the form of a DAC. So we do not anticipate that.

One of the problems that I foresee here is that if the low backs were the issue here, is a lot of the evidence is here. The statistics are available—how many adjustments does it take, how long does it take with these different therapies? But unfortunately with neck injuries, which is the most common thing involving motor vehicle accidents, that research, the chicken has come before the egg, and that creates a tremendous problem for this committee, a tremendous problem.

The Chair: I'd like to thank the College of Chiropractors of Ontario for its presentation today.

ACQUIRED BRAIN INJURY NETWORK

The Chair: We now have the Acquired Brain Injury Network. Ms Vander Laan, welcome to the committee.

Ms Rika Vander Laan: Just by way of introduction, the Acquired Brain Injury Network includes a number of organizations and agencies in the public sector that

provide service and support to people with an acquired brain injury and their families. Members of the network play a significant role in the diagnosis, assessment and treatment of individuals who have sustained a brain injury at the acute care phase in the trauma programs at Sunnybrook Health Science Centre and St Michael's Hospital. Rehabilitation service and ongoing assessment of progress and support is provided on an inpatient basis by Queen Elizabeth Hospital, Riverdale and West Park, and in the community by Community Head Injury Resource Services, the Home Care program and McLeod House. The Head Injury Association of Toronto is also a member and provides support and information to persons living with the effects of brain injury and their families. The network also has representation from the University of Toronto to try and link that research and education arm.

As a network, we have been following the proposed changes to the Insurance Act legislation and, through discussion within the network, have prepared this response to address a few specific elements of the changes. Our comments and recommendations come from our collective years of experience. I've heard a lot of numbers thrown around and I would think, if I started to add up all the years of experience in our network, we might be approaching 500 years or more.

Our focus in the network is enabling clients to access services and support in a way that's equitable, addresses their needs in a timely manner and is directed to the goal of enhancing their ability to function at an optimal level and also supporting their quality of life.

We appreciate the need to develop legislation that's practical, simple, cost-effective and equitable, and we don't envy you your task. It's critical, however, that the legislation takes into account the subtleties and complexities of injuries such as brain injury, so that accident victims do not fall between the cracks and suffer additional and secondary assault related to access to compensation benefits. So we ask you to consider the following points and recommendations.

Brain injury as a separate entity: Since brain injury is distinct in its complexity when compared to other injuries that result from automobile accidents, we would recommend considering it as a separate entity. Differentiating brain injury from more simple injuries such as soft-tissue—not they're always simple—might address some of the concerns that we have around definition, levels of severity and fraudulent claims. It may actually be unrealistic to try and treat all injuries in a uniform manner.

The impact of brain injury on an individual's life may be invisible to an uninformed or unqualified observer. It's not only the individual's ability to walk, talk and function in obvious ways; for example, their ability to reason, to process information, to problem-solve or develop relationships may be significantly impacted by the injury. The broad definition in the legislation of "catastrophic" does not capture the multifaceted nature of brain injury. The complexity of brain injury in reality just does not lend itself to simple catastrophic versus non-catastrophic differentiation.

Use of the Glasgow coma scale as the measure to determine level of severity of injury is of great concern; I'm sure that's not the first time you have heard that

comment this week. A Glasgow coma scale score of nine or less is in and of itself neither a reliable nor a valid predictor of how a person may function in the future. There is a host of other factors to take into account; for instance, something as simple as if someone has been drinking at the time of the accident. The level of alcohol may actually influence the Glasgow coma scale and the score may actually be less. In addition, the injured person may not be rated immediately at the time of injury. If they had their accident in an area where professionals are not familiar with the Glasgow coma scale, they may not be rated until several hours into the injury.

We recommend, around definitions, that the World Health Organization definitions of "impairment," "disability" and "handicap," which are common language universally, be utilized consistently in legislation and related documents. We believe for individuals who have sustained a brain injury, the disability and residual handicap post-injury are much more relevant than a Glasgow coma scale score at the time of injury.

Recognition of the lifelong nature of the impact of a head injury: The impact of a brain injury, be it severe, moderate and sometimes even mild, may be a lifelong issue. As the most frequently injured are individuals of a very young age, lifelong means decades, not 10 or 15 years. The definitions, classifications and subsequent compensation proposals should reflect that reality. Compensation, especially for rehabilitation and attendant care, in those situations may be less than adequate and may force clients and families into inappropriate institutionalization, compromising the quality of life of the individual and at a considerable cost to the public system. The clarification of definitions and acknowledgement of the multifaceted and long-term nature of brain injury is essential to developing a system that addresses the needs of a person with a brain injury.

Objective and timely diagnosis, assessment and payment of services: Diagnosis of a brain injury, assessment of impairment, disability and handicap, together with recommendations for treatment, must be carried out by individuals skilled and experienced in brain injury. The assessment should be multidisciplinary, drawing on the expertise of the various disciplines which bring specific and in-depth knowledge and experience to the process. Objectivity of the assessment and treatment plan can be achieved by ensuring that the individuals who do that assessment have no vested interest in the outcome.

Duplication of assessment, at times to achieve a pre-determined outcome for the insurer, is currently occurring at a considerable cost. Cost to the injured person is measured in the effort and energy of repetition of assessments and delay in initiation of treatment. In current practice, repeated assessments are paid out of insurance funds while comprehensive, multidisciplinary assessments conducted in and paid for by the public system are sitting on charts and not being utilized. When treatment recommendations based on such assessments are made by professionals who have credibility in the field and are associated with an agency/organization that has similar credibility, we believe such assessments should be accepted and honoured.

We support the notion of the dispute resolution process being conducted by independent bodies such as DACs and that their recommendations are binding. It is essential that DACs conducting assessments of individuals with a brain injury are staffed, again, by a multidisciplinary team who have proven expertise and credibility in the field of brain injury rehab and not just general rehab expertise. The key is that the appeal process be conducted in a timely manner to assist the injured person in accessing the most appropriate treatment quickly and prevent delays which could have a negative impact on outcomes.

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The time frames laid out in sections 42 and 43 of the regulations are helpful but leave a question as to how adherence to those time frames will be monitored and in what circumstances the dispute process is activated. The time frames could still result in delays, perhaps a month, in many cases considerably longer when there are repeated requests for additional information. Such delays have the potential to slow down the individual's progress and add unnecessary costs.

Standards: Perhaps here we address the question that was just raised. Recognizing that insurers are not experts in brain injury, making equitable decisions about claims is difficult. We recommend that a multidisciplinary task force be established to work collaboratively with insurers to address some of the issues that have been of concern for a considerable length of time for providers, for clients and their families, as well as for insurers. We see an important role for our network and, in the future, for the new teaching rehab facility to be developed in Toronto in working with insurers to develop protocols and procedures that will ensure clients receive the services required.

As professionals and organizations, we already have in place the tools, the processes and the skills to determine what's reasonable and necessary in terms of rehabilitation and care for persons impacted by a brain injury. We are eager to work with insurers to address the issues so that the goals of effective use of funds and equitable and timely access for clients to insurance funds can be met. Expedient and fair claims management will reduce costs to the insurers and also prevent additional aggravation and insult for injured persons and their families, especially in times of crisis.

Education about rights under the legislation: Clients and their families, in the midst of crisis, need to know their rights in terms of claims settlement. We see that as the responsibility of the insurers and suggest that be clear in the legislation to ensure that individuals have adequate and easily accessible information about claims and appeals, as is currently not the practice. We are committed to working with insurers in developing a process that will ensure a consistent method for informing injured persons and their families about procedures, time frames, appeals and compensations.

Compensation: Compensation is a critical element of the insurance legislation. Concepts and definitions tied to compensation—such as reasonableness, level of severity, catastrophic—cannot be determined by a singular yardstick. In the field of brain injury, the outcome research is still very young. There are no easy answers to predict

outcome of a brain injury, and what is meaningful for a brain injury is usually not comparable to outcomes of another type of injury. There are efforts under way to develop multifaceted scales that attempt to capture and define more clearly the long-term impact of brain injury.

For instance, the Ontario Association of Speech-Language Pathologists and Audiologists has a task force that has developed a scale that takes into account the complexity of the physical, functional, cognitive, communicative and emotional factors that come to bear as someone's life is altered after a brain injury. The Glasgow outcome scale is another instrument that attempts to address the impact of brain injury, although it's a very gross measure. We recommend that alternatives be developed with experts in the field to address these concerns and complexities so that the compensation takes into account the total impact on the injured person's life and not only the visible handicap.

Our last point is around tort, and I do that with some hesitancy, as we don't expect the legal profession to understand the medical implications of a brain injury. Those of us in the health professions do not necessarily understand the intricacies of the legal profession, so my comments are broad.

The reintroduction of elements of a tort system is a regression to a previous pattern of delays for individuals with injuries that are less visible, especially those of a cognitive nature. The tort system has often been described by injured persons as a second assault where the onus of proof is on the injured person. We question whether such a system benefits the individual. If the goal is to channel dollars to the individual who needs it—namely, the injured person—we believe the hidden cost of a tort system may indeed detract from that goal.

We thank you for the opportunity to share our experience and expertise with you and ask that you take into account our comments and recommendations as you draft final details of the new legislation. If you require further information, we will be happy to follow up with you around any specific issues and make ourselves readily available. I'd be happy to answer any questions.

Mr Wettlaufer: I have a little bit of concern with your question on tort, or your suggestion on tort. The feeling we have as a committee, I'm sure after four days, is that we have to reach a compromise here. You've suggested that tort is a regression, and yet you said earlier in your submission, "It is essential that DACs conducting assessments of individuals with a brain injury are staffed by a multidisciplinary team who have proven expertise and credibility in the field of brain injury rehabilitation." It would seem to me that if we have experts in one area who determine that this individual, this claimant, is a brain injury sufferer, then there should be no problem in defining whether or not he or she has been injured and is therefore entitled to some tort.

Ms Vander Laan: That's true. As I said, I'm making very broad statements, not understanding the system all that well. I think the process of tort in the past for people has been extremely traumatic and may have caused delays where delays were not necessary. I think timing is a very critical factor, whatever process is put into place, so that there's timely access to rehabilitation with least

aggravation to the individual. For someone who's had a brain injury, the whole process of trying to access funds—often it's the family that has to take on that role—and trying to access compensation really adds to their stress level. However that process can be put into place to make it as easy for them as possible is very critical. I think that's probably the most important point: timeliness and easy access.

Mr Wettlaufer: I don't think anyone would deny that.

Ms Castrilli: I'd like to return to the tort issue for just a moment. We've had conflicting evidence on this point. We've had lawyers who appeared, and doctors and physiotherapists and chiropractors and victims. They've said they're in favour, they're not in favour; it victimizes, it doesn't victimize. If you don't have a tort system—I'm not quite sure what it is you're advocating. Are you advocating no-fault?

Ms Vander Laan: The no-fault system has facilitated rehab for people in brain injury tremendously. It has allowed access to rehab services that we did not have before.

Ms Castrilli: So you prefer the Bill 164 regime? Is that what you're saying?

Ms Vander Laan: That may be a fairly broad statement, but certainly retaining the access we have. If that access is lost, there will be changes to the system that will not be of benefit to people who suffer from brain injury.

Ms Castrilli: Interesting.

Mr Hampton: I want to ask you some questions that are really based on this submission that came from the group that appeared a couple before you. I believe you're part of their group. They're the overall association. They're saying that acquired brain injury victims "who are not deemed catastrophic (based on the Glasgow coma scale) may not receive adequate payments, but will be eligible only for payments on a reduced scale, which will be grossly inadequate in some cases." I wonder if you agree with that statement. The general direction this proposed legislation is taking, it seems to me, will do an injustice to many of the people you work with.

Ms Vander Laan: I believe that's correct. If "catastrophic" is based on that Glasgow coma scale, then indeed there may be someone who two, three years down the road is not functioning at all, but they had a fairly high Glasgow coma scale score. They would be deemed non-catastrophic so that compensation then, as I understand the legislation, would be restricted to \$72,000 or \$75,000 under the rehab and attendant care. That may be totally inadequate.

It's the invisible disability in that if someone isn't able to problem-solve or if someone is not able to process information, we may have a conversation with that individual and say, "They seem to be fine; I had a conversation with that person," but for you ask them to go back to their work and deal with the complexities of their jobs or to function in their families or to find their way around the TTC might be totally impossible. The impact is much greater than what first meets the eye. I think that's a very critical piece for this particular population.

The Chair: Thank you very much, Mrs Vander Laan. We appreciate your presentation to the committee today, and the work at the Acquired Brain Injury Network.

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ESMAIL SHAHIDI
BRIAN LEILA

The Chair: We now welcome Dr Shahidi. Would you identify your associate, please, for the record and begin.

Dr Esmail Shahidi: Mr Brian Leila is the manager of a centre called Target Rehabilitation Centre. He used to be an adjuster at a big insurance company. He has experience both outside and inside insurance companies and in the rehabilitation field. I thought we could use his experience to answer some of the questions you may have regarding the proposals we have prepared for you.

I am Dr Esmail Shahidi, a chiropractor registered to practise chiropractic in the province of Ontario since 1990. My practice is primarily limited to motor vehicle accidents, to the treatment of victims of motor vehicle accidents, and in the past few years I have dealt with a great number of injured people. I have been exposed to three different systems, namely, tort, Bill 68 and Bill 164.

We all know that for every action there is an equal and opposite reaction. It would appear that the current draft legislation for automobile insurance in Ontario is a direct and opposite response to Bill 164 introduced by the former NDP government on January 1, 1994. You may feel that Bill 164 is a bad piece of legislation. While I do not completely share your view, I believe that two wrongs do not make a right.

The proposed draft legislation does not address the perceived inadequacy and shortfalls in the previous legislation. Our understanding was that the major objective of the government was to control the spiralling cost of present automobile insurance policy. We have now come across reports that suggest this new legislation will actually increase the costs of auto insurance. Surely, if not for that reason alone, this draft should be further reviewed.

We have reviewed the presentations of various interest groups and made our own recommendations, of course concentrating on the areas where we have the most expertise and experience.

We would ask that the following changes be made in the proposed legislation:

(1) That wherever the term "medical" appears in the legislation it be replaced with "health care" unless the term pertains to services as specifically performed by a medical doctor.

(2) Define more clearly the differences between services provided by a physiotherapist and active rehabilitation.

(3) We suggest that the term "chiropractic treatment" be replaced with "chiropractic services" or "services provided by a chiropractor." As you well know, chiropractors are the experts in manual medicine. They are also well trained to provide physical therapy to injured persons. It should be noted that because of their expertise, chiropractors are not only treatment providers, but also work in the capacity of consultants and provide a wide range of rehabilitation services.

(4) With regard to the number of chiropractic and physiotherapy visits or weeks the insurers are required to pay in case of disapproval of the treatment plan, I suggest that subsection 42(6) be amended as follows:

"In case of the dispute with regard to payment for chiropractic services or services provided by a physiotherapist, the insurer may, at its sole discretion, refer the insured person for an assessment by a health practitioner from the same profession whose services are being assessed, to a centre on the roster designated by the OIC. Until such time the report is received, the insurer would continue to directly pay for the treatment to the service provider."

We have dealt with several issues brought to your attention by the various interest groups and we believe our proposals are reasonable solutions to the foreseeable disputes that may arise from the way the legislation is drafted. Our proposals will insure that the insurance company has the discretionary power to immediately or subsequently refer their insured for an assessment.

Presently, our understanding of the draft legislation is that the insurance companies have no choice but to either accept the proposed treatment plan or refer the patient immediately for an assessment which is too costly and will interrupt the patient's treatment plan. This could even result in further prolongation of the patient's treatment, pain, suffering and disability, and consequently the cost of the claim.

We also believe that the person performing the assessment should have the same training as the health practitioner who has submitted the treatment plan. It is unreasonable for a chiropractor to issue a report on the necessity of a knee surgery to be performed by an orthopaedic surgeon. It is also equally unacceptable for an orthopaedic surgeon to comment on the necessity and the reasonableness of chiropractic treatments.

Our proposal will also ensure that the required services provided by the physiotherapist and chiropractor be paid for by the insurers directly to the service provider as long as the insurer agrees with the treatment plan. Please note that we are dealing with a very important and vital issue; that is, making payment for necessary and reasonable medical and/or chiropractic services. Failing to provide necessary funding for early appropriate treatment will result in further suffering of a victim of a motor vehicle accident and will prolong their disability, pain and suffering.

We have seen that even under the OMPP the injured persons, regardless of fault, were entitled to reasonable and necessary medical and chiropractic benefits. Even though the insurance companies basically had no control over their exposure to the cost of medical expenses, a survey of the chart provided by State Farm insurance company, which we have attached as appendix A to our presentation, will indicate that these costs were relatively stable from 1991 to 1994.

As of January 1994, the new no-fault system came into effect. The insurance companies effectively gained control of the medical and rehabilitation costs by being able to refer their insured after eight weeks past their motor vehicle accident or after \$2,000 of medical expenses were incurred to a DAC. However, some insurers claim the

size of spending on rehabilitation and medical expenses grew considerably, while others, such as a large insurer that made a presentation yesterday, admitted they were able to control their overall claim costs and limit them to a 4.8% increase.

We believe the major reasons for a spiralling medical cost by some insurers are because of misunderstanding of the legislation and inconsistent adjusting and indiscriminate use and abuse of the DAC system.

We propose that the maximum medical and rehabilitation benefit be limited to \$25,000 for soft tissue injuries. In case of a dispute, the matter should be referred to a DAC for further assessments and recommendations for approval of funding for medical expenses up to a maximum of \$75,000. Our proposal will allow the insurance companies to better control their reserve funds.

I direct your attention to appendix B of our presentation which we have again extracted from the State Farm insurance company's presentation on February 20, 1996. It appears that the State Farm insurance company paid \$943,000 for medical reports in 1995 as compared to only \$47,000 in 1991. This is an increase of 1,300%. The proposed new legislation, if not amended, will increase these costs even further.

It was our assumption that the DAC process was intended to be an impartial tool which would be used to settle disputes in such areas as treatment and disability entitlements. We predict that under the new system referring patients to the DACs will become a routine part of the claims handling process. This will result in longer waiting lists for assessment by DACs, as the insurance companies will be forced to use them routinely. This will also increase the overall cost of claim settling, in some cases, without providing any benefit to the insured.

1700

Mr Brian Leila: Under the proposed legislation, the insured has to submit a treatment plan before even the assessment or the treatment begins. The insurance company does not have to pay for the expenses incurred prior to the submission of the treatment plan. We believe there should be a reasonable time lapse between the patient's visit and examination by the doctor and the submission of the treatment plan to the insurers so that required diagnostic tests can be carried out and accurate results obtained. Without appropriate test and examination, a reasonable diagnosis cannot be made. The present draft legislation forces the health care provider to give a definitive treatment plan too early after the initial presentation to the treatment facility. Rushing the health care provider to produce a treatment plan without appropriate diagnostic tests would put them in a precarious position. A definitive prognosis is not usually advisable and reliable when the patient is in an acute inflammatory stage.

It has also been my experience that in reality it takes weeks and sometimes months to even obtain an adjuster's name, especially when dealing with pedestrians and passengers. While this is being sorted out, many patients will be denied treatment until the question of coverage is resolved. Some insurance companies do not accept any direct or indirect billing when there is the slightest question of coverage.

Upon reviewing a number of mediation, arbitration and court cases, one will note that the size and number of special awards against some insurance companies will prove that some of them are not just innocent bystanders. They offend and violate their own policy as much as the claimants do.

We have seen insurance companies pay large sums of money for reports produced by independent medical examiners in order to deny payments for disability and health care benefits. Some insurance companies also abuse the DAC process. These centres are supposed to be independent of any influence by the insurance companies and the patients. Over the past two years, particular DACs have become so endeared to insurance companies that they work overtime to produce reports. One particular disability DAC I am told is being booked by insurance companies for mid-1997. The reason is clear: Because the insurance companies will get their favourable reports from that particular DAC, they would prefer to wait more than one year, rather than sending the insured to the next available DAC.

I would ask the committee to amend the regulations so that the OIC could provide a list of approved assessors and centres for the purpose of determining the reasonableness and necessity of the medical and rehabilitation expenses. Additionally, income entitlement for disability benefits can be decided by the same DAC to reduce the cost of obtaining reports.

The monopoly that the DACs enjoy now should be terminated and the OIC should assign an assessor or centre on a random basis to perform the necessary examinations.

It is imperative that the DACs should be totally independent, as they must help resolve disputes over medical expenses and disability. Our proposal will ensure that the DACs will remain impartial and thus reduce cost for mediation, arbitration and court costs.

Finally, we ask the committee to carefully study the impact of changing the present legislation on the victims of motor vehicle accidents in a more detailed way so that we won't have to be back here in front of another committee in two years' time. The impact of your decision on the lives and livelihoods of thousands of residents of the province of Ontario is very great. It deserves a more detailed and careful study of the present draft legislation.

We thank you very much for providing us the opportunity to speak in front of you.

Mr Kwinter: Thank you very much. You've raised a point that many other deputants have raised, and that's the whole idea about the DACs, their efficacy, their independence, their monopolistic, in some cases, perspective.

I'd like to just ask you something. When you have an accident in an automobile, most insurance companies will send you to a centre, where they will evaluate the damage to your car and give you a slip and say, "Okay, go out and get some quotes and do it."

One of the problems that several people have raised is that these DACs are really tied, in some cases, either to an insurance company, to a chiropractor, to a doctor, to a lawyer, to some other health caregiver. What would your reaction be to having a totally independent DAC that does no treatment, does nothing, just evaluates and

sends them on their way to someone who is qualified to do it?

Dr Shahidi: This is an excellent point that you have brought up. Our recommendation to the committee is that the Ontario Insurance Commission be mandated to not only oversee DACs but also implement what they are supposed to do. If an insurance company wants to send somebody for assessment, they would refer that person to the OIC and the OIC will choose a DAC at its own discretion to perform the assessment. This way, the contact between the DACs and insurance companies will become minimal and there is more chance of impartiality. Of course, we consider independent assessments as part of the dispute resolution mechanism, and insurance companies should fund the OIC for the cost of administering assessment.

Ms Lankin: I'm interested in the point that you raise about the various caps for medical-rehab benefits and suggesting that perhaps there be three tiers, which the government did look at but there was some problem around definitions. You're suggesting that for most soft-tissue injuries there be a cap of \$25,000 but that there be a process through the DAC, if there is necessity for benefits beyond that, to approve further benefits.

The point that I wanted to follow up on is that you've suggested that that would allow insurance companies to better control their reserve funds. You're actually the first group that has raised this issue, although I received a fax today from someone who is watching these hearings who has raised the question that in fact we should be looking at standardizing reserves and how they are administered and the ratios and those sorts of things, because in fact it's an area that allows for profits and/or hidden profits, but it also is an area in terms of the control of losses in the insurance industry that you'd want to know what standards and whether all companies are applying the same standards. Could you talk about that a little bit, and how it would allow insurance companies to control their reserves better?

Dr Shahidi: The insurance companies, I understand, keep a reserve fund when there is a liability. Once you bring the liability down, then they have to decrease their reserve funds. With our proposal, we understand that 90%, maybe more than 90% of the people who get injured as a result of motor vehicle accidents, would be able to receive treatments that would cost under \$25,000. This way, the insurers do not have to refer these people to DACs.

DACs are very costly. There are particular DACs we know that if you were to send a patient, it would cost \$5,000, \$6,000, \$7,000 per form. You have to know that at the present time we have medical-rehabilitation DACs and disability DACs. When you multiply that by two, it would be almost half of that \$25,000.

Our proposal would ensure that people will receive adequate treatment. If there is any question by the insurance company as to the necessity or reasonableness of the treatment, it would be referred to a DAC which, the way we have proposed, will be impartial and can resolve the dispute. My suggestion is that if you take our advice to make OIC responsible for the administration of DACs, you can even make DACs binding.

Mr Sampson: Just on the last topic with respect to reserves, I think you'll find one of the difficulties with allowing certain injury categories to flip into the higher injury category, if I can put it that way, is that the actuary who does the reserve will actually do the actuarial assessment at the higher rate, in the expectation that a certain amount of injuries will flip into that category and so you don't get around the reserving problem. That's a dilemma we dealt with when we looked at three levels.

I'm interested in your discussion on treatment plans. When is it, in your view, that treatment plans can be created? It would seem to be very difficult to have a patient start treatment without really knowing what it is you were trying to achieve as a result of the treatment, what your goalposts were, for a number of reasons, the least of which is to make sure that the injured person knows where he or she is going to get as a result of the treatment.

Dr Shahidi: Under the proposed legislation, basically there is no time for us to do a complete examination, assess the patient, perform the necessary tests and make a diagnosis and come up with a reliable prognosis. My personal experience tells me that we need at least two to four weeks to come to a reliable prognosis when we make a treatment plan. The treatment plan should not be open-ended, and there should be a cost analysis done on each treatment plan. In the acute phase, it's very difficult, a few hours after an accident, to come up with a definitive treatment plan.

1710

Mr Sampson: But are you treating the patient within that four-week time frame?

Dr Shahidi: Yes, of course.

Mr Sampson: What are you treating them for, if you're treating them?

Dr Shahidi: The patient initially is in an acute inflammatory stage. Our goal is to limit the inflammatory stage and try to get the patient as mobile and as active as he can be. But we have to also know that there are counter-indications to our active rehabilitation or other forms of treatment, or diagnostic tests may be required.

Under the present plan, we have to immediately produce a treatment plan and jump on the fax machine and fax it to the insurance company to get approval. In most cases, we don't even know if there is an insurance company. Sometimes it takes days or weeks for people to inform their insurance companies they have been in an accident, or they get the symptoms of the motor vehicle accident, the injuries, and the insurance company sends them forms for accident benefits and opens up a file and assigns an adjuster to it. So the way this has been proposed is unworkable.

The Chair: Dr Shahidi, Mr Leila, thank you very much for your presentation to the committee today.

Ms Lankin: Mr Chair, could I just table a quick question? This flows from the fax that was sent to me, and I will readily admit that I do not understand the process of reserves, other than just in a sort of a broad intellectual understanding; I don't understand the technical detail of how that works.

This person sets out a request that the committee look at the standardization of the reserving system for all insurance companies so that the system can be monitored prior to rate increases being granted to companies. It's suggested there's presently no set standard and that company reserves, for example, on medical are 10 to 15 times their actual number, which he argues results in hidden profits from the return on investment. He makes suggestions that we should be looking at certain rules around reserves when they're linked to restrictive writing or cancellation of contracts, that reserves should be removed when the file is closed, not 12 months after.

I don't know the details around all of this, but perhaps this is an area, Mr Sampson, that we could ask legislative research to look into and to inform us through the Ontario Insurance Commission whether this is a reasonable way for us to proceed or an issue for us to look at.

The Chair: If there's no discussion, we'll ask Andrew to come up with something in that area.

Mr Wettlaufer: It may be very difficult to obtain standardization of reserving, because everyone's injury is different and there is a great deal of discretion on the part of the medical-rehab specialist, the insurance adjuster, the case manager, as we've heard. Every individual claim is different and every reserve is different. But we can approach the Ontario Insurance Commission.

The Chair: Thank you very much.

RON GILLIS

The Chair: It is now our pleasure to welcome Mr Ron Gillis to the committee.

Mr Ron Gillis: Thank you very much. I'm very happy to be here, and I want to thank the committee for allowing me the opportunity to appear. My name's Ron Gillis. Of course, I'm an insurance broker in Etobicoke. I've been selling automobile insurance in Ontario since August 1982, both as an agent and as a broker. I am considered a small broker, and I employ on an ongoing basis two to three people in various capacities in our firm.

Much of the fun has gone out of my business since the introduction of Bill 164: rising premiums, inflexible markets, unhappy clients and financially struggling companies which historically have been one of the backbones of our country. I am faced with fraudulent claims, suspicious companies and an unsympathetic public. Much of the goodwill that I have built up over the past years through team sponsorships, community involvement and charitable work, which is how I generate my business, has been decimated by a clientele that is incensed that there is little value for them in the current auto insurance product as it sits.

My role as a broker has changed significantly. I never envisioned myself being an advocate appearing before a government committee. The role of the property and casualty industry, of course, has also changed. They are now seen as providers of life insurance, death benefits and disability benefits, and not as risk insurers. The role of government has effectively been altered, from the introduction of Bill 68 onwards, from a passive player to an active stakeholder. The consuming public have little regard for the professionalism of our industry. Their role

has been more militant and more defiant. We take the statistic that approximately 35% of people driving in Metro Toronto today are driving without insurance or are underinsured.

I would like to take this opportunity to applaud the work of Mr Sampson and ask that the work that has been done in coming up with this legislation be given serious consideration as there is overwhelming support for auto change by us, the distributors of the product. I would encourage the adaptation of the rules and strict enforcement by the law enforcement agencies of those who cannot produce satisfactory evidence of insurance. One of the things that we are faced with constantly is a number of people coming into our office, wasting our time, getting a certificate that they can produce to a police officer. There has to be given serious consideration for not having vehicle registration and vehicle insurance, and the fines have to be appropriate because there are repeat offenders out there. The courts have held that the evidence of that pink certificate is evidence of insurance, and hence it lends itself to fraudulent claims.

Two other points and I won't take any more of the committee's time: The option to purchase higher limits is an excellent idea. The product itself was not seen as a provider of life insurance; when somebody currently dies in an automobile accident, they are given \$50,000. The death benefit should be minimal, as many individuals have some form of life insurance today, either through their employers, their associations or individually held plans. There is a product there that makes up for what the auto product is currently offering.

In summary, I would like to address four points. It is critical that this legislation clamp down on insurance fraud. Without a question, this is a major, major problem in our industry right now. Reducing benefits will create other opportunities for other stakeholders in the offering and delivery of the product; that goes without saying. We applaud the reintroduction of tort. We feel it will make people more responsible in a system that historically has run well. It will also provide many opportunities and free up this government to tackle more serious problems that are facing our province. We support, as a member of the IBAO—and I can't speak for the entire industry but I can speak for myself and a number of my colleagues—any changes that will bring accessibility and affordability, and bring back the fun in our business.

The Chair: Thank you, Mr Gillis. Would you have time for a round of questions?

Mr Gillis: By all means.

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Mr Hampton: I'd like to get your reaction to the points that have been raised by a couple of other organizations that have been here. For example, the Insurance Bureau of Canada is basically saying that this package will result in annual premium increases of 8%. Zurich Insurance is saying that in their estimate—and they are, I gather, the second-largest insurer in the province—it will result in annual increases of 12%. What do you think that will do to your business and your dealings with your clients if that's the kind of rate increases you'll be telling them about when they come in to buy auto insurance?

Mr Gillis: Let me start off by telling you that the last time I had an insurance claim was 1979, and the last time I had a traffic conviction was May 18, 1982. My insurance went up 27% last year. I have not claimed in all those years.

The product itself is priced way over. Those increases that are cited by the IBC are probably predicated on the fact that we have not been able to control the costs—the costs of fraudulent claims, the costs of body shops, the costs of lawyers' contingency fees etc. If we are able to control those costs, I think the increases will be moderate. I think that they're probably erring on the high side. My feeling is that Zurich has stepped apart. They have indicated that they're in favour of the other system. The majority of the property and casualty industry are in favour of the reintroduction of tort—and the modification of the plans; it goes without saying.

Mr Sampson: Thank you for your presentation and coming to speak to us today. I must admit, a good friend of mine who lives in my home town and is in the industry, his mood has gone down during the period of Bill 164 and he's looking forward to a better business climate as well. I hope that this product will do that. One of the things that we tried to do is create a balance between the tort and no-fault to stabilize the price. The numbers that are coming from IBC I have already stated aren't acceptable, don't represent stability on our part. We clearly need to work on some of the control items you talked about to make sure that they are in the plan so that people can get an affordable system and a justifiable system.

One of the concerns we have heard from the brokerage community, though, is that the top-up provisions that we're suggesting may put an undue burden on the brokerage system, the very important distribution system of this product, as it relates to potential liability exposure. Can you comment on that, and how at least you feel in your own shop about having the opportunity to sell top-up insurance to customize for your clients?

Mr Gillis: If I could use what we currently have available now, which is the OEF 45 endorsement: We have approximately \$1.5 million of business; I have yet to sell one of those. We have insured people from the Blue Jays right down to single welfare mothers; we have never sold that product. People do not want to pay any more for automobile insurance. That option should be there, but it should not be built into the product. It should be up to the discretion of the provider, distributor, and up to the client to make that choice, because there are layers and layers of coverage built throughout the system. All you have to do is take a look at your own individual portfolios to find where there are—there's creditor insurance, there's mortgage insurance, there's disability insurance, there are individually held plans—overlaps, and the product should not be designed in that way to accommodate a statistically insignificant amount of people in the province who require the full enchilada, as it were. I am not totally familiar with the top-up provisions, but I can comment on the OEF 45.

Mr Wettlaufer: What do you think would be a good minimum fine for driving without insurance—\$5,000?

Mr Gillis: I believe, for a first-time offender, if they are not able to produce within the stipulated period of time—and I'm not talking about a back-dated but an actual valid policy—within the 48 hours, they should have a \$1,000 fine immediately. There should be no areas whatsoever. The law is quite clear; vehicle registration and proof of insurance have to be carried in the automobile at all times. It belongs to the automobile; we're insuring the automobile; it is the responsibility of the individual with the care, custody and control of that car to make sure that those documents are there. So \$1,000. It may require some public education, because within the last four or five years we've modified the product so much, people frankly don't know what they're covered for, what fault means, what no-fault means. It's a real quagmire out there, and we're at a loss, especially confronted with the fact that we may have to turn around and explain to the public again the changes that are coming down the road.

Ms Castrilli: Mr Gillis, thank you for being here today. We've had a number of presenters talk about the critical problem of fraud and how this is impacting on the cost to consumers. We had one presentation that estimated fraud at about 33% of all claims. I wonder if that meets with your experience in the field and I wonder too what suggestions you would have for changes to the legislation to attack the problem of fraud.

Mr Gillis: The area of fraud is one where, first of all, there is no negotiation with risks. The "all comers" has basically indicated we have to insure and we have to provide. We are in business and that's what we want, but we would like to be able to direct our business where it will have minimal impact. We're not able to do that.

With fraud, again, it's a character assessment. The man sits at the other side of my desk. He's writing a cheque. I have to assume his cheque is going to be good and that the document he has signed is correct. The fact is, many people misrepresent; they lie or they have oversights as to whether they were actually at fault in an accident, or whether there was actually a \$50,000 payout or a \$5,000 payout. That information is not often available, but there are individuals—and part of it is organized crime as well where there are groups operating in collusion with—I won't say physicians, but people in the medical field, people in the legal field, who have helped coerce and bring certain individuals into an area where they've been able to claim 14 and 15 times. These people do exist. I have a situation right now where I've had people who, for a \$700 bumper loss, have claimed on me \$43,000, and we're still climbing. What do I do? I know this is wrong. I know this person is working and yet the benefits keep going. Why? Because if they don't, the carrier is penalized significantly.

There are other alternatives, but to control fraud there has to be tighter legislation, tighter enforcement by the police. Frankly, the police have taken the attitude, especially at collision reporting centres, "Okay, the insurance is going to take care of it." It's a low-priority item. They've got 15 calls backed up. They won't respond to an automobile accident today; it's just not in their mandate. You have to go to a collision reporting centre. Many people will just drive off. We had a case just

recently where one of my good friends was cut off in the middle of the night, completely left. The police officer came, the plate was given. Four weeks later, there is no tracing of the plate, no copy of the police report. We've had to pay out \$17,000 for the car, and my friend has incurred some injuries, but he's too proud to take any sort of benefit and he continues to work.

The Chair: Mr Gillis, we thank you very much for presenting to the committee and appreciate your time.

CICIL JAIPAUL

The Chair: Welcome to the committee, Mr Jaipaul.

Mr Cicil Jaipaul: Mr Chairman, ladies and gentlemen, for several years now I've been teaching insurance on a part-time basis. I taught automobile insurance under three different systems. The students in my classes are made up of claims adjusters, underwriters, brokers, managers and others. They go on to write the examinations leading up to the associateship of the Insurance Institute of Canada.

Often in a classroom, they would comment on various insurance matters. Automobile insurance is perhaps the most popular and relevant topic that is discussed. I must say at the onset that I restrict my presentation to classroom discussions. Therefore, I cannot provide any information that may have been obtained outside of the classroom. My remarks this afternoon represent a few of the concerns that were raised in my classes.

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First, with respect to the definition of "spouse," the bill changes this definition, but I feel that it does not take into consideration some other situations. I will deal with two of those situations that were reported by Hughes, Alys in their publication, the OIC Note.

In one instance, the parents of an injured claimant had ceased cohabiting seven months before the accident. The separation ended in bankruptcy for both parents. For reasons related to the bankruptcy, they declared that they were no longer spouses. They married a year after the accident. In this case, it was decided that they were spouses and were entitled to benefits.

In another case, two years and five months before the death of the insured, he lived with a claimant. The claimant was applying for death benefit. The Ministry of Community and Social Services frequently required the claimant to certify her marital status. She'd always shown that she was single. In this case, it was decided that the claimant was or constituted a spouse and was entitled to a minimum of \$50,000 death benefit.

I would suggest that the new legislation should clarify these situations and ensure that issues like these are addressed.

Rehabilitation benefits is another area. Concerns have been raised that there are no standards or certification required for some of the providers of rehabilitation benefits. The legislation should provide for some establishment of a committee to look into some sort of licensing of accident benefit rehabilitation consultants.

Death benefits. Section 23 of the proposed regulations deals with death benefits. Our society has several single parents who do not have a spouse. The proposed legislation does not allow for the payment of the optional death

benefits. Even though it may have been purchased, it does not allow for the payment of optional death benefits to the surviving dependents. This is unfair.

Funeral expenses. This is dealt with in section 22 of the proposed regulations. Funeral expenses are not clearly defined in the bill. Sometimes when one person dies, a claim is made for double cemetery plots, monuments for two, food for the wake, the services of a limousine. The legislation should, I think, be consistent with the definitions in the Funeral Directors and Establishments Act.

The next point I'd like to look at is average weekly income. It would be easier if the legislation set out the calculation of average weekly income, and this should be based on the actual number of weeks worked before the accident. It is felt that this would validate the current practice in the industry. The proposed legislation implies that the average is over 52 weeks and not the actual period worked if that person had worked for less than 52 weeks.

Housekeeping and home maintenance expense. The draft regulations allow for a cap of \$100 per week. This is an excellent change.

Damage to clothing is dealt with in section 30 of the regulations. Claim representatives are concerned that they are required to pay for very expensive jewellery, watches and other items lost in motorcycle and automobile accidents. The bill should set a limit of \$1,000 payable under this section.

Education expenses. Education expenses should be extended to include tuition, books, transportation, school supplies and room and board. The bill should set a maximum benefit of \$1,000 per semester.

Exclusions under the regulations. These are dealt with in the proposed regulations in section 33. Under the present system, if a person purchases the optional coverage under the collision or the damage section of the policy and their vehicle is involved in an accident, in some instances the insurer may be able to deny coverage. The insurer will not pay for loss or damage to the automobile if the insured was unable to maintain proper control of the automobile because they were driving under the influence of intoxicating substances. This is set out in section 7.2(2) of the current policy. However, an insurer will be able to deny weekly no-fault benefits only if there was a conviction under the Criminal Code for a similar offence.

To show the seriousness of this matter—driving while under the influence of intoxicating substances—the standard for no-fault benefits should be the same as the standard set for claims under the physical damage section of the automobile policy; that is, there should not necessarily be a conviction.

Notice to the insured: This is dealt with in section 34 of the proposed regulation. The draft regulation provides that if the insured person, without reasonable excuse, fails to notify the insurer within 30 days of their right to file a claim for accident benefits, the insurer may delay their decision on entitlement for 45 days after they receive the application.

In another section, it states that if the insurer determines that a person is not entitled or no longer entitled to receive benefits, the insurer must give the claimant 14

days' notice. The notice by the insurer must also consider the date of entitlement, not necessarily the date when the application was received. This will take into consideration those cases where the claimant, without reasonable excuse, reported the claim outside that 30-day period.

Repayments to the insurer: this is dealt with under section 52 of the proposed regulations. Sometimes payments of benefits are made and later it is discovered that there was misrepresentation or fraud. In these cases, you can only deduct as repayment 20% of the amount of weekly benefits from each payment of the ongoing weekly income benefit. The 20% rule should not apply where the overpayment was due to misrepresentation or fraud.

Application for benefits: Claim representatives are prevented from asking certain questions that would help them in their investigation to decide whether a person's entitled to a benefit or whether the person might be engaged in double-dipping. In one case that was reported by Hughes, Amys in their publication, the OIC Note, in an arbitration decision, the claimant was receiving social assistance and lived in subsidized housing. This claimant was determined to be a spouse for death benefit and claimed a minimum of \$50,000, despite her misrepresentation to the Ministry of Community and Social Services. The bill should allow for an approved application for benefits form, where the claimant, resident in Canada, must show whether they are legally permitted to work in Canada and whether they are receiving social services benefits.

Paraprofessionals are often used in handling accident benefits claims, so there are concerns about the increasing use of independent paraprofessionals in handling these no-fault claims. Commenting on this, York University Professor H.W. Arthurs, in his report to the former minister responsible for insurance, the report entitled *A Review of Advocacy and Dispute Resolution in Ontario: Automobile Insurance Systems*, wrote, "As a matter of practicality, some insurers, lawyers and other informed participant observers complain about the ethics, price and competence of paralegals."

Paralegals employed by law firms are subject to law society regulation. Independent paralegals are not regulated. Professor Arthurs also stated that, "It does not follow that claimants should simply be abandoned to the unregulated behaviour of whichever lawyers or paralegals happen to venture into the area of automobile accident benefits."

The bill should include provisions for the licensing of independent paralegals dealing with accident benefit claims.

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Two final points I'd like to mention. These are miscellaneous points under the proposed regulations dealing with non-residents.

The bill should provide that persons who are not resident in Ontario should receive benefits only to the extent that they are not at fault in the accident; more so, if they are from a province or a state that does not have the sort of reciprocal arrangements where Ontario residents would get full benefits.

The other one is with respect to the Insurance Crime Prevention Bureau. To control claims costs and to eliminate abuses of the system, the legislation should mandate reporting by all insurers to the Insurance Crime Prevention Bureau. The legislation should also allow for fines for non-compliance with any aspect of the legislation.

This bill makes interesting changes to the current automobile benefits system. It strikes a good balance between the benefits to the claimants and the administration of those benefits. My objective was to bring to the committee a few of the concerns of a number of people I came into contact with while teaching at Metro community colleges. I sincerely hope that you will take them into consideration during your deliberations on this bill. I thank you for giving me the opportunity to present these views.

Mr Sampson: I can understand why you were in the front of the class and perhaps not in the back of the class in your classroom.

Mr Jaipaul: Thank you.

Mr Sampson: You've touched on a number of very important points. I just want some clarification, if I can. The average weekly incomes recommendation you have is to calculate that over the period employed over the last 52 weeks as opposed to the 52 weeks from the date of the accident? Maybe you can just clarify that for me. I didn't quite get it.

Mr Jaipaul: The practice is if a person had worked 26 weeks in the last 52 weeks, their average would have been the average of those 26 weeks. That is the practice. What I'm hearing is that they would like to see that practice written in the legislation rather than as it appeared initially, where you divide by 52 weeks regardless of how many weeks you had worked.

Mr Sampson: We had one recommendation, if I can recall it correctly, that we try to gear that to the last taxation year. I think the follow-through from that argument was, you at least will have a document, ie, the last tax form, to verify that income level, which, as you may or may not know, is somewhat of a difficulty in some of the arbitration cases that are going through the OIC. Do you take the tax form or do you take what they're saying their income is? Do you have any comment as to whether or not we should take a look at tax years as opposed to actual employment years—or sorry, the time from the accident back?

Mr Jaipaul: I would think it should have been the time that they worked, not necessarily the tax year.

Mr Sampson: Okay.

Mr Kwinter: Thank you very much, Mr Jaipaul, for a very thorough evaluation of the draft legislation. Would you clarify something for me? Under contract law, and an insurance policy is a contract, if there is misrepresentation or fraud, it's void. You cannot benefit from something that has proven to be fraudulent or misrepresented, yet you sort of imply that there is one provision, that if there was fraud, you'd still be eligible to up to 20% on that basis. Could you just clarify that for me?

Mr Jaipaul: What I was saying is that you're still entitled to some benefits. In some instances, the benefit might have been paid and later on the misrepresentation or fraud is determined, because there are time frames within which the benefit must be paid. As the investiga-

tion continues, it might be determined that there was a misrepresentation or fraud, by which time you might have paid several weekly benefits. When you set out to recover those benefits, the recovery is limited to 20% of whatever the ongoing benefit is. You cannot deduct more than 20% of the ongoing benefits.

Mr Kwinter: Notwithstanding that it was fraudulently received?

Mr Jaipaul: That's right.

Mr Kwinter: I think you're right; that should be looked into.

Mr Hampton: The general tenor of your presentation is that insurance benefits need to be ratcheted down. Is that a fair conclusion?

Mr Jaipaul: No, I don't think so. I think the benefits that are set out in the proposed legislation, from what I'm hearing, are fair benefits, and if those benefits somehow, and I don't know how, could result in a reduction of insurance costs, that goes outside of the classroom. Perhaps from a personal point of view that would be favourable.

Mr Hampton: What I hear you saying, and correct me if I'm wrong, I'm just going on what I've been reading in the media reports and some of the other submissions that I have read here, but the fact of the matter is that the benefits will be reduced by this legislation. Do you agree with that?

Mr Jaipaul: Yes, I do.

Mr Hampton: What I have difficulty understanding is, you're going to reduce benefits—and in some cases the reduction in benefits is significant—and yet the Insurance Bureau of Canada says that the annual cost of insurance will go up by, as they estimate it, 7% to 8%. Zurich Insurance says closer to, I think, 12%; Co-operators agrees with Zurich. If you're in effect reducing the benefits for accident victims, and that should somehow reduce the cost of this, how do you get an ongoing 7% to 12% or 13% cost increase every year in premiums?

Mr Jaipaul: One thing I'm glad of that in my classes I'm not required to teach how rates are calculated. I never understand that. I only understand what benefits are available and I can only tell you what students think about those benefits.

The Chair: Thank you, Mr Jaipaul, for sharing your information and presenting to the committee.

ACCIDENT RECOVERY PHYSIOTHERAPY

The Chair: We now have Accident Recovery Physiotherapy. Welcome to the committee—is it Mr Benyacar?

Mr Michael Benyacar: Benyacar, yes, and my lovely wife, Sharee.

The Chair: Welcome to the committee.

Ms Sharee Mandel-Benyacar: Thank you.

Mr Benyacar: Sharee and I have been the owners of two private physiotherapy practices for the last 10 years, and we're glad we could be here today to contribute any ideas for this committee. Our approach, though, because we weren't able to obtain a copy of the full legislation to see the details—it wasn't available in the three days that we have had to prepare for this, so we took a more holistic approach and tried to look at the actual intent of

the legislation. We are going to make some submissions based on that intent rather than on many of the details.

The first submission we want to make is in regard to statements by the insurance industry itself that half of all auto insurance premium increases are due to the soaring costs and profits in the auto industry and that the committee is really only addressing half the problems in regard to runaway auto insurance premiums. It's our suggestion that the economic sector of the auto industry be investigated for excessive profits, fraud and perhaps be regulated as the medical community and the legal community are. We believe that dealing with just half of the problem at best can only come up with half the solution.

Additionally, we submit that in the future, when the record-breaking profits of the banking industry get involved in the insurance industry too, that will change the whole landscape of the insurance industry. That should be looked at too in order to maintain long-term stability in the insurance industry as well and not to be neglected.

1750

The second point we want to raise is that we feel that entrepreneurial physical therapists are not responsible for the rising medical claims. Rather we believe that the Ontario College of Physicians and Surgeons' removal of their regulatory prohibition against physicians owning rehabilitation clinics, combined with the previous administration's legislation of capping of physicians' salaries, was a clear invitation to exploit other means for recouping losses.

This has resulted in a marked increase in physician- and some lawyer-owned therapy clinics and is characterized by an act called patient streaming, whereby patients are first queried as to whether they have insurance to cover therapy before being assigned preferably to the physician's private clinic over their OHIP clinic. We believe this easy and unethical exploitation of insurance companies by physicians is a primary reason for soaring medical claims. We submit that if the proposed legislation is intended to halt the exploitation of medical insurance claims, then the practice of patient streaming should be halted immediately. Another practical option would be that physicians would be required to inform both patients and the insurer of their financial interest in any rehabilitation clinic they happen to be participating in.

Thirdly, we believe that insurance companies already have more than enough authority to refuse injury claims. Refusal of claims without evidence or just cause only delays a patient's opportunity to return to pre-accident status, and we submit that the proposed legislation should be amended so as to state that any refusal for physical therapy should be implemented only when it has been proven that it is unwarranted, and not prior to that.

Fourthly, before we begin treating any patients in our clinic and in most private practices that we're aware of, approval is always granted by an insurance adjuster and is requested. However, that approval will only be given verbally. The reason for keeping it only verbal and refusing to make the commitment in writing is that often in the future such decisions are reversed by insurance adjusters. The big problem with this is that it adds additional emotional and financial stress to the patients and to

the physiotherapy clinic and most often has to end up and be settled in court. We would like to submit that the insurance industry have to approve all assessments and treatment plans in writing so that they cannot arbitrarily reverse their decision without just cause in the future.

Fifthly, although the Regulated Health Professions Act was amended in December 1993, placing physiotherapists on par with chiropractors and physicians in certifying, diagnosing and treating disabilities, the government of Ontario refuses to grant new OHIP licences to physiotherapists. In fact no new OHIP licences have been granted to any physiotherapist in Ontario since about 1967. Existing OHIP licences for physiotherapists typically sell for \$500,000 and greatly contribute to the capital costs that must be recovered by an OHIP clinic.

We believe that this discrimination is grossly unfair and goes against the insurance industry's desire of shortening the recovery time of injury victims by forcing OHIP clinics to lower quality of service for economic survival. You may not see the direct relationship between the legislation and an OHIP clinic. However, if a patient takes longer to return to pre-accident status, that is more time he's off work and collecting benefits. The sooner they can be returned to pre-accident status the better it is. So we submit that it is in the best interests of all parties to allow all existing physiotherapy clinics to be able to apply for an OHIP licence.

Sixth, in addition to the Regulated Health Professions Act, the statutory accident benefits schedule designates physical therapists as a profession that has authority to certify disability. Insurance adjusters simply refuse to accept this fact and insist on copies of physician's referrals and often dispute the assessments and treatment plans of the physical therapists. This naïve and insulting act is usually accompanied by physical assessments and suggested therapy treatments by the insurance adjusters themselves. We believe that these medically untrained people lack the scope and training to make such important decisions.

In the majority of cases physicians simply direct a physiotherapist to assess and treat. Therefore, the request for duplication of assessment places unnecessary delays in the patient's path to recovery and additional costs to OHIP. We submit that amendments should be made that assessment by physiotherapists be accepted by the insurer and to allow only those who have been medically trained to make assessments and treatment plans. Additionally, medically untrained insurance adjusters should be completely disallowed from making medical assessments and treatment recommendations, limiting their authority to only requesting independent medical opinions.

I want to get on to the provision of benefits here, the concept of Canadian law being that we're all innocent until proven guilty. The proposed change of denying benefits for six months to unemployed people who pay the same premium is, I believe, unjust. This proposed change insinuates that poor or unemployed people are automatically less honest and must be treated accordingly prior to any deed. We believe that this paranoia of abuse by the unemployed is morally unjust and unwarranted. We submit that this amendment should be dismissed or at the very least be modified to allow lower premiums for

unemployed people, since they would otherwise get no or very little benefits.

Two very quick points and then I'm finished. This point is a little bit outside the legislation, but I feel it's an interesting one I want to bring up. Many of the insurance companies operating in Ontario are American subsidiaries. In the last two years American insurance companies have had record-breaking insurance claims in excess of \$20 billion due to the LA earthquake, Hurricane Andrew and the Mississippi flood. We submit that this committee investigate the possibility that American subsidiaries may be raising insurance premiums in Canada to subsidize American insurance claims and that Canadian insurance companies, no longer fearing competition from their American counterparts, are jumping on the bandwagon towards higher premiums.

Lastly, if the government of Ontario is serious about lowering auto insurance premiums and lowering taxes, as it has repeatedly stated, we submit that the removal of the 5% sales tax on auto insurance premiums implemented by the previous administration be removed.

That concludes the issues that I want to bring up here with you today. I thank you very much for taking the time to listen.

Mr Kwinter: Thank you very much for your presentation. I'd just like to get clarification on one issue and then I'd like to discuss another one with you. You talk about that physiotherapists being covered under the Regulated Health Professions Act., yet you say that there hasn't been a physiotherapist licence since 1967. You really mean a physiotherapist facility as opposed to the physiotherapists themselves. I assume that you practise physiotherapy as a licensed practitioner.

Mr Benyacar: Yes.

Mr Kwinter: I happen to know something about this particular issue. There are areas that are designated for that particular physiotherapy centre and you can't open another one within that area and they haven't given a licence since 1967. It's just like a taxicab licence. The price has gone up astronomically because you can only transfer the licence, you can't get a new one. Is that what you mean?

Mr Benyacar: That's partly it. However, what I'm trying to make you understand here is that it indirectly affects the length of time that most patients take to recover by forcing these clinics to have to lower the quality of service for economic survival. The best interests for the patients and the insurance industry is to get people back to pre-accident status as quickly as possible. Withholding OHIP licences just makes the cost of owning and running an OHIP practice very expensive. Most people are in the business 10 years, 20 years, 30 years, and these licences have to be sold for enormous sums of money and those capital costs have to get buried into the cost of the services.

Mr Kwinter: I'm also interested in your point about the reverse onus, that it's up to I guess the insurance company, or it could be the DAC, to determine that. In other words, they have to prove that you don't need the treatment as opposed to the other way around where you, as the physiotherapist, have to prove that they do need the treatment.

Mr Benyacar: Correct.

Mr Kwinter: It would seem to me that on the one hand you have no hesitation and say that "this easy and unethical exploitation of insurance companies by physicians is a primary" source of "soaring medical claims." What is to prohibit that from any health service provider if they don't have to show the cause for it, but as long as they say that it's up to the insurance company to prove that they don't need it as opposed to the health care provider to prove that they do need it. I think you're going to have a wide-open, open-ended system with—

Mr Benyacar: What I'm trying to say is the rehabilitation shouldn't stop, shouldn't be interrupted while that dispute is going on. The insurance adjuster should have the right to seek independent opinions and make a decision based on that, not suspend therapy until that opinion comes to fruition.

1800

Mr Hampton: Just a quick comment on your last point, the removal of the 5% sales tax on auto insurance premiums: I don't want to disappoint you, but I think if you follow the government's negotiations with the federal government regarding the GST, we may well soon see 12% sales tax rates applied to auto insurance and many other things in the province. While I understand what you're getting at there, I think you're probably going to see the sales tax in auto insurance go up, not down.

Could I ask you about the patient streaming?

Mr Benyacar: Yes.

Mr Hampton: While I haven't sat on this committee all week, I have watched some of the hearings and I've done some constituency work in the field of auto insurance claims. It does seem to me that we are seeing an abundance of clinics, and the ownership of those clinics is open to interpretation and dispute. When you see patient streaming, what are you seeing? Can you give us a more lengthy description than you've set out here?

Mr Benyacar: Basically, the cause of it is physicians wanting to increase their income. They open up two clinics, an OHIP version and a private practice version which they can bill to insurance companies. Where they send their patients is dependent upon—

Mr Hampton: Who's paying.

Mr Benyacar: —who's paying and who can pay them more. That's exactly where that patient will go. That's what patient streaming is.

Mr Hampton: So if the patient were injured in an automobile accident and they're receiving auto insurance benefits, send them to the private clinic.

Mr Benyacar: Right, which he has a financial interest in and that's where he would make more money from.

Mr Hampton: We saw some evidence earlier that insurance companies have over the last four or five years started to request an unusual number of medical reports, and if you look at the rate of increase of their request of medical reports, it has accelerated very rapidly. Has that been your experience?

Mr Benyacar: We actually implemented our own program where we send them a document that we request they sign. We provide them with regular medical reports, weekly, biweekly, bimonthly or monthly. They sign it and send it back to us and we automatically send reports

to insurance companies at the frequency they request. But we ask them to request it in our particular clinics.

Mr Hampton: Is there a charge for each of those reports?

Mr Benyacar: Yes, because it takes time to write them up. They decide how often they want to have them.

Mrs Marland: Thank you very much, Mr Benyacar. I want to say at the outset that I appreciate, as a member of this committee, your forthright and very open presentation because I feel that from your experience and your perspective you have been very direct with us. We need that kind of submission and that kind of information, because we in turn then can ask other people about it with that knowledge.

I too want to spend a little bit more time on the area of patient streaming because, frankly, I wasn't aware of it until this week. I'm not in the clinic business myself and I'm not in the insurance business either, and fortunately I haven't been a motor vehicle accident victim.

Just to play the devil's advocate with you, is part of the problem for a physician that they need to get that treatment as quickly as possible for that motor vehicle accident victim and the waiting time is a lot longer in the OHIP clinics because we have so few? I don't know why we haven't resolved that problem, to tell you the truth, because I always think it's abominable that if you really want to get physiotherapy treatment as quickly as possible, you have to go to the private clinics because you wait forever at the public ones. Is that part of the element of the problem here?

Mr Benyacar: No, because if the patient needs immediate physiotherapy and they have coverage for private physiotherapy, they can receive it immediately at many private practices. So the doctor isn't doing it just to provide immediate service. As for the OHIP clinics, you have to understand the logistics. It's \$12.20 per patient per visit no matter how long the treatment is or what the treatment is. It doesn't take much math ability to figure out you have to push a minimum of 100 people a day through the clinic to be economically viable. Because there are so few OHIP clinics out there, they're just backlogged because of the huge volume. There need to be some more OHIP clinics.

Mrs Marland: What do you suggest is the solution? I've agreed for a long time there should be more OHIP clinics, but what is the solution between a private insurance company and the doctor who has the private clinic? Is there something the government should do?

Mr Benyacar: Yes.

Mrs Marland: Should the government be saying that doctors shouldn't own private clinics?

Mr Benyacar: That's right.

Mrs Marland: Or shouldn't be able to refer to clinics that they own or their friends own?

Mr Benyacar: We understand everyone has their profession. The doctors have the medical profession, physiotherapy has the therapy profession, lawyers have the legal profession, and everybody seems to be invading our profession—doctors and lawyers and other entrepreneurs. It's getting to the point where everyone's just doing whatever they can to slice up what they believe is a huge, lucrative

field, and it's becoming the opposite because there are so many players involved.

Mrs Marland: Do you think patients will continue treatment after they were recovered? When you talk about it being the primary reason for soaring medical claims, I can see a possible exploitation of the patient, but do you think a patient is going to continue going for treatments after they've recovered in their own terms of movement and comfort?

Mr Benyacar: I don't quite understand what you're trying to lead to.

Mrs Marland: You're saying how unethical you think the streaming by physicians of patients to their own clinics is, and I agree with that, but you're also saying that's the primary reason for soaring medical claims. But I'm also asking you, as a professional, whether there are practitioners in medicine or physiotherapy who would encourage patients to continue coming to them, because the insurance company is paying for it, after they need the treatment.

Mr Benyacar: I believe so. I personally have been approached by three physicians who want to go into partnership in such clinics and I declined. Secondly, you have to understand there is a marked difference in the quality of service between an OHIP clinic and a private practice. Since we get paid more per patient, we can spend a lot more time with them, develop a relationship with them and see to it that they follow their home program. They're more apt to respond to that because they have that one-on-one relationship with a physiotherapist they see for an hour every day rather than being left in a room on some machine for 10 minutes and "Good day."

The Chair: Thank you very much. We appreciate your presentation to us today.

1810

PAT MCPOLIN

The Chair: Mr McPolin, welcome to the committee.

Mr Pat McPolin: I would like to take this time to thank the committee for giving me an opportunity to speak today. I believe it is worth noting that approximately one year ago, I called then-Minister Laughren's office about this issue. His assistant in charge of insurance refused to return my calls.

There is no one in this room with a better driving record than I have. In 18 years of driving, I've not had an accident. I've not had a single claim, not even a broken windshield. I have all my merit points. My sin, however, is I did not have insurance when I did not have a car. From my understanding, there are two types of coverage lapses. One is not having insurance for at least 12 months in the last 24. This is automatically sent to Facility. Of note, three weeks ago Mr Sampson's assistant told me that the draft legislation would address this, but apparently it does not.

The second type of lapse is not having insurance for 30 days or more, but having insurance for 12 months in the last 24. This is the category I fell into. During the fall of 1994, my vehicle succumbed to its 485,000 kilometres. As the deal for my replacement vehicle fell through, I began shopping for another vehicle. When I found this

car, I went to a State Farm broker who informed me that, due to my lapse in coverage, my six-star driving status was now no star. In disbelief I went to three different brokers from three different insurance companies who all told me the same thing. In fact, he told me I would get the best deal from my previous insurer, State Farm.

On the first page of my handout, you'll find a quote for six months of insurance from another State Farm broker, this one offering me one-star status. That quote is for pleasure driving and the right includes business use. Now look at this. This is an eight-year-old car with no collision, only a half-million dollar liability, which most insurers would consider underinsured. For business use, this would cost me in excess of \$2,000 per year. The brokers told me that had I left insurance on my car, even though it did not exist, I would have retained my six-star status.

In September 1995, I prepared a brief synopsis of my situation and requested a logical explanation. I sent this letter to the Ontario Insurance Commission; John Gerretsen, MPP for Kingston and The Islands; and State Farm head office. The Ontario Insurance Commission called me within one week. John Gerretsen notified me that my concerns were being forwarded to the Minister of Finance, Ernie Eves. State Farm, to date, has not responded. That is five and a half months and counting.

Pages 2 and 3 of my handout are the response from Ernie Eves, received January 9, 1996. I would like to draw your attention to the following:

Paragraph 2 begins, "It is insurance industry practice to rate an individual, with a considerable lapse in automobile insurance coverage, the same as an inexperienced driver." The key word is "considerable." Insurance companies define this as 30 days; that is, if you're an insured driver for 40 years and then you go 30 days without insurance, you start over.

Paragraph 3 begins: "Insurers argue that there is a considerable amount of fraudulent activity occurring as bad drivers camouflage their poor driving record by lapsing their coverage and re-entering the system at a later date as drivers without previous insurance, or a substantial gap in insurance coverage. Insurance companies state that they have no way of verifying this."

What are insurance companies telling us? If you get into an accident today, they will not be able to find a record of it in 30 days? Or 13 months? Or three years? When I re-entered the land of the insured, my broker questioned me on an accident that took place in 1988, nine years previous. The car involved in the accident was a car I had driven and was insured on in 1985. I had never owned the car, nor was I involved in the accident. Perhaps insurers' records are a little better than what they are telling the Minister of Finance.

Paragraph 4 begins, "Unfortunately, the insurance industry does not appear to have systems in place which are able to differentiate between the fraud artist and a legitimate lapse in coverage." So these insurance companies, some of the most well-funded industries in the world, do not have systems in place. It occurs to me that if I control the company that could gouge its best customers for twice the price, I would not have the systems

in place to prevent it either. I urge everyone here, if they have the stomach for it, to read this letter several times.

You've heard from many people this week. In a forum such as this, there is a danger, for individuals on the committee do not or cannot identify with some of the speakers. I'd suggest to you that this Saturday you call your insurance broker and request cancellation of your auto insurance. Your broker will tell you to keep fire and theft on the vehicle. You say, "Well, the car's not worth it," and your broker will say, "You will lose your driving status." But you say, "The truth is, the vehicle was towed to the auto wrecking yard." Your broker says: "I didn't hear that. You did not tell me where your car is." You say, "I don't feel right about insuring junk." Your broker will ask: "Do you have any relatives with cars? Will they let you be named as a driver?" You say, "But I will never drive their vehicle." Your broker will say, "That does not matter." Who is encouraging the fraud here?

The fact is, you are not allowed to leave the insurance umbrella in Ontario. Having a vehicle is inconsequential with respect to your requirement for insurance. In order to retain your driving status, you must keep paying. When you speak to your broker, you will realize that every suggestion made to save your driving status will cost you money. What a great industry. I can see the insurance industry being concerned with drivers dropping out of the system for several years and passing themselves off as new drivers, but 30 days or 13 months? Five years maybe. I know they are not calculating my rates with a slide rule, so they must have access to a computer. The province has the ability to follow my driving record.

The problem does not exist in all provinces, so if there is a standard industry practice there may be a competition problem in this industry that merits investigation. What happens if tomorrow I get a traffic ticket or, God forbid, get into an accident? I'm under the belief that I'm on double secret probation now. I anticipate I would go straight to Facility. Would that be fair, my first accident ever?

In closing, I would like to bring your attention to how this industry practice has larger influences. Suppose after my car died, I'd been looking for a new one. Once I'd picked my new car, I would have gone to an insurance broker who would have quoted me a \$5,000 to \$6,000 cost for full insurance. No way would I buy a new car. Is this the kind of economic message this province wants to send out? How many millions of taxpayer dollars have been spent on encouraging people to use public transit? How successful would the Better Way be if you told drivers that if they stopped driving and took the Better Way, their insurance would double? Thank you.

1820

Mr Hampton: The story that you tell is not an unusual one. I've heard of people who have left the province for awhile, say, moved to British Columbia, moved to Manitoba, have come back and have had to go through a lot of work and a lot of effort to convince an insurance company that their insurance didn't lapse and that they were covered at all times, even when they were outside the province. I've had to help some of those folks as constituency cases, and it certainly has led me to the

belief that this is more a game than it is associated with any sort of insurance reality.

Let me ask you, what legislative change do you think would correct this situation? I certainly agree with you that insurance companies have well-established computer banks. I know when I get a speeding ticket they have no trouble finding that out very quickly and notifying me of it. Is there a legislative answer to this?

Mr McPolin: I don't pretend to know what insurance companies are legally allowed to access, but I read into it that their argument is that they can't look at other insurers' records. If that is the case, that's one legislative change. If that's not the case, then they are just gouging people.

Mr Wettlaufer: Thank you, Mr McPolin. One thing I would like to know is, how many days were you actually without insurance?

Mr McPolin: I started seeking insurance—five months, it ended up about eight months. But let me assure you that when I went to the first State Farm agent, he didn't care. He didn't ask for anything as soon as he heard 30 days—and as far as I know, there's no graduated status. They don't say, "Well, you lose one star for 30 days."

Mr Wettlaufer: I'm a little bit unsure about industry practice in so far as 30 days is concerned. I do know that if you don't have insurance for at least 12 months out of the 24-month period, that is in fact the case; that is the industry practice. However, there is something else that people probably don't know, that there are a few insurance companies which will not share their experience on a particular individual with other companies, and perhaps State Farm is one of them.

You do make an interesting suggestion that your insurance should follow your driving record. That might be something we could take up with the Ministry of Transportation, because up until perhaps 15 years ago the motor vehicle abstracts produced by the Ministry of Transportation included the item of accident at-fault. It no longer includes that and that is one of the problems insurance companies have, that they cannot access the information of an accident at-fault if the company with which you were previously insured will not give that information. So that might be something we can explore.

Ms Castrilli: Mr McPolin, there's me left. I'll keep you a very short, brief moment.

Mr McPolin: Oh, no. I'm in no rush.

Ms Castrilli: I don't have any questions for you. I just have a comment. This is a common occurrence. I've seen it happen particularly with seniors who forget to reapply and miss that 30-day window and it's something which is of great concern in my riding, where I do have a very large senior population.

I know Mr Gerretsen's interest in this issue. He's a colleague of mine. You should know that another colleague of mine, Mario Sergio, has introduced a private member's bill to deal just with the situation. We would certainly endorse it and we would hope that the government will include that, either in the amendments to this bill or as a private member's bill, to deal with honest citizens who are not trying to defraud the system. So thank you very much for coming in and telling us.

Mr McPolin: I appreciate that. I think that most insurance companies should just have the logo, "We Own You." Then we'd know.

Ms Castrilli: Point well taken. Thank you very much.

The Chair: Thank you very much, Mr McPolin. You have a large number of people whom I'm sure you represent.

NORMAN PARSON

The Chair: Mr Norman Parson, we have 20 minutes to spend together.

Mr Norman Parson: Thank you very much, Mr Chairman. I appreciate the opportunity to present my views. My name is Norm Parson. I have lived all my life in Toronto, Ontario, and have been driving since 1946. During that time, I estimate that I have paid in excess of \$25,000 in auto insurance premiums and have claimed less than \$5,000. To me, the present auto insurance act is a very unjust and unfair piece of legislation, not only to the purchasers of insurance but also to victims. It does, however, give the insurers a compulsory market and an opportunity to make exorbitant profits. Now they have the Facility Association, where a driver is deemed a high risk if four or more points are accumulated in the last six years.

On Monday, during the presentation by the Insurance Bureau of Canada, we heard one representative state that his company left the standard market and went into the Facility Association because there were more profits. This risk point system is very unjust for many reasons. Risk points accumulate over a period of five or six years. This is not clearly defined in the insurance risk point chart. Driver demerit points are only kept for three years.

Risk points are assigned without any opportunity for defence. Demerit points are assigned after a conviction in a court or if a plea of guilty is rendered.

Risk points are the same no matter where you live, yet insurance rates show that in Toronto you have a 50% higher chance of a claim than in Ottawa. This is indicated in a publication called *Your Guide to Rates in Ontario*, prepared by the Ontario Insurance Commission in 1995.

Points lost due to Criminal Code convictions. The Facility Association brochure does not define this. Major and minor convictions are too severe for drivers with less than four years of driving experience. Due to the new graduated licensing system in Ontario, new drivers will now actually have more driving experience. Also, given that new drivers are much more likely to get into accidents, the industry does charge them higher premiums and always has.

No evidence of coverage. During the recent recession, which has been going on for five years now, many citizens of Ontario have had to sell their vehicles or have left Ontario to find employment.

Referring to this Facility Association with their unjust appraisal of high-risk drivers without an appeal and the fact that when a member of this committee asked, "What is the definition of a good driver?" the Insurance Bureau of Canada on Monday did not reply, I would like the government to immediately stop this practice, as it is depriving drivers in this province the opportunity of obtaining auto insurance that is required by law.

As regards the cost of the Facility Association insurance, regardless of what was actually paid in claims, I can only compare with my own figures which, as I previously stated, have totalled less than \$5,000. To be covered under the Facility Association, my own broker has quoted me \$4,411, and with taxes it totals \$4,631. I obtained a quotation from State Farm Insurance of \$5,416, which comes to \$5,686 with taxes. Under Vachon, which is a member of Kingsway, the premium would be \$4,706, for a total of \$4,941 with taxes. According to my figures, the average premium I am asked to pay is \$5,086. Paying this for six years would total \$30,519 and, coupled with the \$25,000 or more I have already paid in premiums over the last 50 years, would in effect represent the purchase price of almost four new average automobiles.

1830

From this explanation, and by the large number of drivers put into this Facility Association in the last year, I am sure that it will eventually show up in decreased sales of new cars, the automobile industry closing down or greatly reducing their production, more unemployment, less taxes for the Ontario government to operate on—in short, a downfall in the province's economic growth.

The automobile insurance industry is always lamenting that they are not making any profits, yet in 1990 when the people of Ontario voted for a government that was going to bring in government auto insurance, this industry spent millions of dollars in various ways to keep an industry that was losing money. At that time, the Insurance Bureau of Canada published a brochure in which they stated the industry had paid somewhere in the neighbourhood of \$149 million of taxes to the province of Ontario alone. Remember, taxes are based only on profits. In their presentation on Monday, they stated that in the next five years, even with the reduced payments as proposed in this draft legislation, rates will increase between 35% and 45%. To me, this indicates that this industry is greedy and is exploiting the citizens of this province who are, by law, required to do business with them.

The first piece of legislation this government repealed was the labour law and now the government is reducing benefits under workers' compensation, both of which affect the average Ontario citizen. It was stated on Monday that the average gross income in Ontario is \$42,000. Considering all deductions, the net take-home income is only \$21,000. I have estimated an average budget for this income:

Housing	\$8,400
Food	10,400
House insurance	1,000
Utilities including heating	3,000
Clothing	1,000
Automobile	3,600
Gasoline	2,500
Auto insurance	3,000

The auto insurance figure is based on profile 3 in the *Guide to Rates in Ontario*. The total comes to \$32,900. Just with this simple budget, the family has a budget deficit of \$11,900. This clearly indicates that the last three items must be eliminated.

In our province, where I believe there are some six million licensed drivers, this would mean that about five million fewer automobiles would be purchased, five million less insurance premiums paid, untold less provincial tax revenue from gasoline, sales tax, not to forget the provincial income tax lost due to the large number now employed in the auto industry that will become unemployed and thus be added to the welfare rolls.

Ever since I began driving I could never understand why public liability and property damage was placed on the automobile when, in reality, it is the driver that is ultimately responsible for causing the damage. I believe that now is the time for the government to start having compulsory liability and property damage placed on the driver's licence instead of the vehicle. This is turning the clock back, but then, it is common sense.

I was impressed with the presentation made by the Insurance Bureau of Canada on Monday, by the numbers in attendance, by the calibre of people in attendance, as well as the skilful presentation and coordination of the presentations. I would estimate that the bureau's submission must have cost in the neighbourhood of \$10,000. This for an industry that is losing money?

I would like to recommend that this government repeal the Compulsory Automobile Insurance Act which, in my opinion, gives one industry the right to rob the people of Ontario legally. I would propose that the government consider increasing the driver's licence fee to approximately \$400 per year or whatever the cost for accident damages would be in that neighbourhood, or give the option of providing proof of insurance coverage for the levels set by the government. This would allow owners of automobiles to have a choice of insuring their vehicles for collision, theft, fire, plus the option of additional coverage for injury etc.

In conclusion, I would like to thank all the members of this committee for giving me this opportunity to air my views on this important issue. I sincerely hope that I did not offend anyone through my remarks. I do hope that the members of the Legislature will always remember that in deliberating all their decisions, they should bear in mind the fundamental basic principle of democracy: What is best for the majority of the people.

Mr Wettlaufer: Thank you, Mr Parson, for your appearance today. One area you may not be aware of is that the \$149 million of taxes which are paid to the province work out to about 3% of the premium dollar that the insurance companies collect and that equates to the tax that they must pay on premiums collected, not profits. That's a tax that insurance companies must pay.

What I would like to ask is, when you talk about the five- or six-year risk points, are you aware of why the insurance companies calculate risk points over a five- or six-year period?

Mr Parson: No, I'm afraid I'm not. It's not publicized.

Mr Wettlaufer: Okay. What it is really is that insurance rates are calculated on a base rate of zero years accident-free, and most insurance companies have categories for one, two, three, four, five and six years accident-free. In order to properly assess what the credit should be for those years, they must keep track of those

risk points, which are based on convictions and accidents. That's the purpose of it. I won't say whether I feel that the companies are entirely justified in all of their practices. I will leave that for another day and another person.

Ms Castrilli: Thank you very much for coming in. Obviously you've experienced firsthand some injustice, or what you consider injustice, at the hands of insurance companies. I just want to be clear on what it is you're saying. You're saying that you would like an opportunity to appeal the decisions that are made by insurance companies. Is that the thrust of your discussion? In other words, you're assessed as a risk factor but you're not—

Mr Parson: That is one part, yes. You do not have a chance to explain. They don't even look into the figures. It's just that you had an accident. The accident might only have been \$200.

Ms Castrilli: So you would like the opportunity to say there are extenuating circumstances, or the damage was minimal, or bring in any other consideration that you thought was relevant.

Mr Parson: Yes. Also, as I think was pointed out, even though you might be assessed as the person causing the accident, you may not always have been the original origin because, when I was taught to drive, it was considered, in Ontario at that time, if you could avoid an accident, you did it.

Now it's quite possible, quite often it's happened that you'll be driving along and you're in your lane. Another vehicle decides to turn into your lane. In order to miss him, you swing into another lane. You don't hit the vehicle that hit in front of you because you were trying to avoid him, but unfortunately, somebody coming in the other lane hits you. When it comes, you would be assessed as the at-fault person by the insurance because you turned in. The other person was in their lane, but you missed causing an accident in the front. You have a choice: You either drive through the fellow in front of you, and then again it might come to a point that they could assess both of you at fault. So then both drivers are in it.

It is not a fair system. The insurance companies—and we've heard in this part here about their fraud—you are quite aware, it was mentioned by one of your colleagues that the auto collision people, when you go in there, ask you, "Who's paying for it, you or the insurance company?" If the insurance company is paying, it's substantially higher. The insurance companies know this. This has been going on for years. It's nothing new. But what have they done to prevent this on their side?

Ms Castrilli: Thank you. I know you've been following these hearings from the beginning. Thank you for staying all day. I think you've been here all day to give your presentation.

Mr Parson: Yes, I have today. There was a lot I wanted to hear and it has been very beneficial.

The Chair: Thank you very much for coming in and sharing your experiences and your opinions with us today. We appreciate it. That concludes our agenda for this afternoon. This committee stands adjourned until Monday morning in Thunder Bay.

The committee adjourned at 1842.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Substitutions present / Membres remplaçants présents:

Boushy, Dave (Sarnia PC) for Mr Spina

Churley, Marilyn (Riverdale ND) for Mr Silipo

Crozier, Bruce (Essex South / -Sud L) for Mr Phillips

Gilchrist, Steve (Scarborough East / -Est PC) for Mr Hudak

Hastings, John (Etobicoke-Rexdale PC) for Mr Ford

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

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finance and economic affairs**

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Assurance-automobile

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Monday 26 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Lundi 26 février 1996

The committee met at 0904 in the Victoria Inn, Thunder Bay.

AUTO INSURANCE

The Chair (Mr Ted Chudleigh): I'll welcome everyone to Thunder Bay. In true northern and western hospitality fashion, the members from the area, Mrs McLeod, from Fort William, and Mr Gravelle, from Port Arthur, have joined us this morning. Welcome to the committee. You've got a great riding, both of you.

Mrs Lyn McLeod (Leader of the Opposition): No argument from us.

The Chair: We have a bit of committee business to do this morning. There was a motion, which has been circulated to the committee, was moved by Mr Crozier.

Mr Bruce Crozier (Essex South): Yes, so I will move it again. Is that what you're looking for?

The Chair: Thank you very much, sir.

Mr Rob Sampson (Mississauga West): On a point of order, Mr Chair: Mr Crozier, if I can make one suggestion, under 1(b), it says, "The clerk of the committee forward the summary of recommendations...." These are obviously recommendations from the various people who have presented in front of us, so we should add "of the presenters" or "of the deputants," whatever you want to call them, just to clarify what those recommendations are.

At 2(a), the "recommendations" are clearly recommendations for inclusion in the draft report. I'd insert in "the subcommittee members return to the clerk of the committee their recommendations not later than March 21," the words "for inclusion in the draft report." It would read, "the subcommittee members return to the clerk of the committee their recommendations for inclusion in the draft report not later than March 21." It's a bit of a run-on, but that clarifies what these recommendations are.

Mr Crozier: In that this has some similarity to the original motion, I'll accept that.

The Chair: Could we read it into the record, please.

Mr Crozier: I move that:

1(a) The committee research officer prepare a summary of all the recommendations made before the committee and the summary be delivered to the clerk of the committee by March 7, 1996.

(b) The clerk of the committee forward the summary of recommendations of deputants to the committee members as soon as received.

2(a) The subcommittee members are to return to the clerk of the committee their recommendations for inclusion in the draft report not later than March 21, 1996.

(b) The clerk of the committee is to deliver the recommendations from the three caucuses to the committee research officer as soon as received.

3. The committee research officer is to incorporate the recommendations into a draft report.

4. The committee is to meet on Thursday, March 28, 1996, to review the draft report.

The Chair: Thank you very much. Comments?

Mr Peter Kormos (Welland-Thorold): Thank you, Chair. I'm going to be supporting this motion because I trust that, among other things, the summary will include the position I took in my submission last week that this province develop a publicly owned auto insurance system so that drivers can enjoy the same fairness and innocent accident victims the same justice here in Ontario as they do in British Columbia, Saskatchewan and Manitoba.

It's incredibly important that this government, albeit inherently opposed to concepts of public ownership—and for the life of me, I couldn't understand why. Obviously, when one joins the picket lines this morning by OPSEU members attempting to protect public services, one sees the pain and the devastation that a cut in public services entails. But certainly the only way we're going to achieve fairness and justice for drivers, premium payers and for victims is with a public auto insurance system. The private sector has been and continues to be unable to deliver on the issues of fairness and justice.

It's important that this government, even this government—and Mr Sampson has been quite fair in speaking about public auto insurance, more even than the last government did, during the course of his review of the crisis in auto insurance. I'm optimistic that, yes, even Mr Sampson is sympathetic and in his heart understands that public auto is the way to do it. He knows what's happening in BC, Saskatchewan and Manitoba. He knows those systems work better. I'm pleased to support this motion.

Mrs Margaret Marland (Mississauga South): Mr Chairman, I think it might be helpful, when Andrew prepares the draft report, if he could identify the source of the recommendations, just use an acronym for the Insurance Bureau of Canada or the head injury association or PC, Liberal or NDP.

Mr Sampson: I was going to resist speaking to this one, but Mr Kormos has goaded me into responding to his comments about public auto. I think this will be a step in the right direction in trying to get some recommendations to the government on how to respond. I suspect we will hear, at least from one of the parties, when they provide the recommendations to be incorporated by the research officer that public auto will be a solution. In spite of what some of the press would like to report, I have said we are not in support of public auto. I want to make that point clear on the record.

Mr Kormos: Misquoted again.

Mr Sampson: That's what happens, I guess.

The Chair: Thank you very much. Shall the motion carry? Carried.

Mr Sampson: Mr Chair, on a point of order: I've got a written submission from Citadel Assurance Co with respect to auto insurance, a letter sent to me February 16. I'll table that with the clerk, if he could pass it around to the committee members.

Ms Annamarie Castrilli (Downsview): Mr Chair, in that same vein, you may recall that last week I asked a question of the Canadian Bar Association with respect to contingency fees and the impact on insurance rates. They have forwarded a letter to me dated February 23, 1996, which provides a complete answer. Again, I would ask the clerk to circulate it, and I table it.

The Chair: Very good. Mr Carrozza, there is another circulation to be made. That concludes the housekeeping duties before the committee.

0910

MELISSA FELTEAU

The Chair: We could begin with Ms Felteau. There is coffee across the hall for anyone who wants it. There's also simultaneous translation available. The committee members have headsets in front of them, if we require them.

Ms Felteau, we have 20 minutes together. Welcome to the committee.

Ms Melissa Felteau: Good morning. I'm Melissa Felteau and these are my parents, Irene and Wilf.

By putting a human face on what it's like to access services through the insurance system, we hope to suggest improvements to the proposed auto legislation. Today, I would like to focus on three issues: insurer approval, accountability, and improvements to the system.

I was a passenger involved in a serious highway collision two years ago, in November 1993. That puts me under Bill 68 legislation. I sustained a ruptured spleen, broken ribs, multiple soft tissue injuries, and most seriously, a traumatic brain injury.

I was lucky. My surgeon arranged for a neurosurgical consultation and I was diagnosed within the first days, but my luck stopped there. Nobody ever told us what "closed head injury" meant, or what to do if we noticed any changes in function, ability or mood.

On my own, I found out the terrifying truth. I couldn't read, I couldn't write, I couldn't remember what I was saying halfway through a sentence, I couldn't organize a meal, I couldn't follow a conversation if more than two people were speaking, I couldn't remember how to drive to familiar places.

At the time of the injury, I was working for the Ministry of Health as head of a public relations department at a local hospital. It was terrifying to discover that my brain wasn't working as it should. Realizing that the difficulties were not coincidences caused by stress, and that everything got worse the harder I tried to work through or beyond them, led to further testing five months after the accident. It confirmed the earlier diagnosis.

My life has been devastatingly ripped apart by this injury. My point: The Glasgow coma scale had no bearing on predicting what kind of difficulties I have had to face. The bottom line here is that the insurance industry

is looking for easy answers, and it's not going to find them. Injury, recovery and healing are not static rings on a bull's-eye. They are movable, messy and individualistic, particularly when we're speaking about coping with the effects of brain injury.

That brings me to my next point. I am most concerned about the amount of control insurance companies have now, and with these proposed changes, in approving or denying medical treatment. Giving the insurance industry the right to approve or deny medical treatment is tantamount to giving them the scalpel to do triple bypass surgery, and I mean "bypass." They are not trained in any way to make those decisions. They are not medical practitioners. They are not immediately accountable to anyone. And their business is driven by profits.

Let me demonstrate why I am so adamant about this issue. Earlier I stated that I was diagnosed with a traumatic injury by a neurosurgeon. That diagnosis has been confirmed by two neuropsychologists, a family physician, a neurologist, as well as two brain scans. After two painfully unsuccessful attempts to return to work, I was referred to Toronto for a vocational assessment to determine if it is still possible for me to perform the tasks of my job. It was very clear to me, my family and, eventually, the local treatment team that services do not exist locally to address the complex needs of individuals with high-end cognitive deficits. I would need to leave Thunder Bay for treatment. I have been waiting over one year for GAN Canada to approve the proposed treatment.

Although someone may not be able to see my difficulties, they are real and they are serious. Survivors of brain injury face the grim reality of trying to beat the odds of 4% to 5% of ever returning to work. I want and need to be one of those people, yet I am caught fighting a huge battle with my insurance company. Initially, GAN wanted to hire two nurses in Hamilton to review my file to determine if I indeed have a brain injury and whether services existed in Thunder Bay to assist me. Two nurses were hired to override the diagnosis of five doctors who specialize in the field and know best what services exist locally.

It doesn't stop there. Obviously, I proceeded to mediation through the Ontario Insurance Commission. I found the process ineffectual due to its lack of binding authority. When GAN refused the mediator's recommendation to at least meet with my treating practitioners, either in person or by phone, to discuss the "necessity and reasonableness" of the recommended medical treatment, the mediator should have been able to enforce immediate action on such obvious stalling tactics. Instead, GAN sent me to another three independent medical assessments. I have had five in 13 months, eating up a sizeable chunk of rehab funds. GAN is still not satisfied, even though their preliminary diagnosis is the same, and refuses to approve treatment or suggest an alternative treatment plan they are willing to fund.

The travesty of my insurer's handling of the medically necessary vocational re-entry program closes the window of opportunity each day I await their approval.

And that's not all. Three times GAN has ceased paying me the weekly income replacement. The first time was three months after I was injured. They said I was unem-

ployed at the time of the accident despite having received all the appropriate paperwork from my employer of seven years. It took four months to be reinstated. The second time, GAN queried my salary figures. They didn't pay me for one full year. Most recently was this fall when the eighth claims adjuster assigned to my file declared he didn't get around to paying me for three months because, he said, "It's a big file." Each of these payment disruptions left me in a financial crisis.

That's not all. Since I've started keeping track of when I submit claims and when GAN Canada reimburses me, 16 out of 20 claims have gone far beyond the legislated 30-day time frame. Most of them are three to six months overdue.

0920

That's not all. So far, I've accumulated a \$16,000 legal bill trying to obtain necessary medical rehabilitation and other benefits.

This has been a nightmare beyond belief. I wish I could say I'm the exception to the rule in the way insurance companies treat their customers, but I'm not. When you talk to other customers, my treatment has been disturbingly similar. When insurance brokers and companies cry foul about rising insurance costs, citing fraud and unreasonable guidelines for compensating accident victims, it rings hollow. They need to look within their own organizations, correct the many inefficiencies, learn how to communicate better with their customers, work in conjunction, not against, the individual's clinical team and get on with it.

I think the true hidden costs come from incredibly frustrated customers who find themselves denied necessary medical treatment, caught in ineffectual dispute resolution systems and resorting to suing their own insurance company for failure to provide adequate, timely rehabilitation.

As taxpayers, irresponsible handling of insurance claims affects us all. First and foremost, there is no greater loss than to the injured individual and their family. They are struggling to accept the reality that a serious injury brings. Failing to respond quickly and humanely to this individual's needs does not make their problems go away. The person is likely to resurface in the public health care system, like myself, seeing my family doctor monthly, sometimes weekly, and by also being referred to numerous health care professionals and specialists, like my speech pathologist and neurologist, to see if anything can be done while I wait one year, perhaps two, using the dispute resolution mechanisms for my insurance company to approve and fund treatment.

I can tell you that dealing with the trauma of this insurance mess at times has made my primary diagnosis 300 times worse. Until insurance companies are forced to be accountable, people like myself are going to cost the system double.

I am very pleased to see that the Conservative government has moved so quickly to introduce much-needed changes to the auto legislation, but it does not remedy the fact that so many people are left dealing with the inadequacies of three former pieces of legislation. I believe it would be more cost-effective to grandfather these individuals into the new legislation. Failing that, provision

should be made for the individual, in conjunction with their treating clinicians, to apply to the Ministry of Health to fund medical and rehab services and bill back the insurance companies. The proper care of accident victims is too important to be left in the hands of unregulated insurance companies that have proven themselves irresponsible.

While I applaud the proposed changes to streamline the dispute resolution process, in my opinion the root causes of conflict have not been addressed. Before this injury, I was an expert in the communications field. I can tell you, living through this nightmare I have witnessed some of the worst communication practices I have ever seen.

The insurance employees I have dealt with often possess inadequate skills to make decisions about serious and complex issues. They are looking for easy black and white answers. There is none. And while I agree that not one penny should be spent on fraudulent claims, I believe some companies are possessed with rooting out fraud, losing focus of what really works: early intervention, frequent two-way communication—and I mean two-way—and non-adversarial involvement of all parties.

I would like to recommend the following improvements to the draft legislation:

(1) Develop under the Ontario Insurance Commission a consumer-driven accreditation process for insurance companies. Compliance with standards of practice and customer satisfaction should be made public.

(2) Develop clinical standards of treatment and fee schedules to instill insurer confidence in proposed medical treatment.

(3) The individual's own medical professionals must be the ones to decide treatment based on what impairments have been incurred and how best to address the individual returning to the demands of their life.

(4) Victims must have a huge say in their treatment or it won't work. This includes choosing their practitioners.

(5) I am not convinced the designated assessment centres can accurately assess an individual's problems without the benefit of a longer-term therapeutic relationship with the person. The new independent committee under the OIC needs to address how these assessments can be done humanely and accurately.

(6) A system of advocacy needs to be in place to assist individuals in dealing with the insurance system bureaucracy or the insurer pays for the claimant's lawyer's fees.

(7) Restore the basic benefit to \$1 million. With clinical and industry standards of practice in place, better understanding of treatment modalities should eliminate the need to subject injured individuals to more bureaucratic scrutiny and medical examinations.

(8) Definition of "catastrophic impairment" is invalid, partially due to reliance on the Glasgow coma scale. Individuals all react to injury and impairment differently and therefore must be assessed according to how impairments impact on their returning to the demands of their life.

(9) That provisions be made to grandfather individuals into the new legislation or provision be made to apply to the Ministry of Health to fund medical and rehab services and bill back the insurance companies.

I know how incredibly lucky I am to have what skills and abilities I have left. I also know I am so very lucky

to have the exceptional love and support from my parents to come as far as I have. I often think about the people living with the effects of brain injury who, due to the nature of their injury, aren't able to say what needs to be said. I hope in some small way I've helped to make things better. Thank you for this opportunity to appear before the committee. I wish you well in your efforts to improve the insurance system in Ontario.

Mr Crozier: Thank you, Ms Felteau. You've been very clear, despite your concern at the end about being able to do so, to explain your situation and the difficulties you've had under the current insurance legislation in accessing what you feel you have the right to.

You've made a number of recommendations which we appreciate. Not being able to go through all of them, I would point to (1), that you think there should be a customer-driven accreditation process. That's rather interesting, because I think what we depend on insurance companies to do is to deal in good faith, and if there is any way we can improve that—I am sure there are a number of stories similar to yours, because we've heard them, and the best-written legislation perhaps might not be adequate if you don't have a company, an insurer that wants to cooperate.

I, for one, certainly appreciate your attendance here and your recommendations, and I would hope we can take them back and use them to the best of their abilities. 0930

Mr Gerry Phillips (Scarborough-Agincourt): Maybe you could just articulate a little what you had in mind in (1), in terms of how it may in fact work.

Ms Felteau: Because I work in the health care system, or was working prior to my injury, I know the hospital accreditation system best, and I've participated in that process a number of times.

What I'd like to say at the outset, they found that they needed consumer input, because anyone can candy-floss anything to look good, so you need to go to the customers who have been using the services of that particular industry and ask them directly. "How good is GAN Canada"—not very good, in my opinion—"at doing their job?" How well is someone else doing? Then you need to develop that accreditation process so there are standards that they need to meet in terms of how many complaints they receive in a particular time frame. Are they meeting the legislative—someone has to go and look at their records and see if they are indeed meeting the time frames.

Take my 30-day turnaround for claims. They're not meeting that. For 17 out of 27 months they should've been paying me a portion of my salary, and they aren't even paying a big part because my employer is paying the larger part. But for 17 out of those 27 months they blew it. So let's measure how they're doing. We can use facts and figures from their own records and then talk to the customers. "What kind of treatment did you get? Did they listen to you?" They don't return my phone calls. They don't return my letters, and that's even going all the way up to the president of that company.

Mr Phillips: That's helpful, thank you.

Mr Kormos: Thank you, Ms Felteau. Just this morning I was mentioning to Mr Sampson my concerns about

the fact that there didn't seem to be enough consumer presentations to this committee. I'll call them victim presentations, because I think what's really tragic is that so many victims are victims first on the highway and then once again victims of their own insurer.

I recall the debate over Bill 68, which was really the effective implementation of no-fault, and the argument was, "If you're dealing with your own insurer, granted, but you see, they'll treat you good, because after all, if you don't like what they're doing to you, you'll go to another insurer." But it's all after the fact, isn't it?

Ms Felteau: Absolutely. I dropped my insurance company, but I'm left having to deal with them.

Mr Kormos: Exactly, and there's been a whole lot of talk about the cost of legal in terms of tort, but there hasn't been a whole lot of talk, the way you've talked today, about the whole cost of legal when you're trying to even access no-faults.

Ms Felteau: Exactly.

Mr Kormos: It's interesting, because you do know it and I can see that in a private sector insurance regime, as persists in Ontario, it's driven by profit, and historically the insurance industry has always had short arms and deep pockets. At the end of the day, they're real good at collecting premiums and not so good at paying out benefits. It's sort of like putting Dracula in charge of the blood bank when you let the insurers dictate what your treatment protocol is going to be, isn't it?

Ms Felteau: We have a system of universal health care and yet when it comes down to people who have been involved in auto accidents, it doesn't work for them. All of a sudden, someone else gets to determine that.

Mr Kormos: The tragedy is that there's very little consumer role and very unlikely to be any consumer role in a regulatory body. As a matter of fact former Attorney General Ian Scott wrote a treatise about the fact that regulatory bodies almost inevitably tend to be co-opted by the industry that they're regulating. The Ontario Insurance Commission is a strong illustration of that.

Wouldn't you want to see access and an assurance of funding for your legal costs, even in the event of no-faults? You may well be fortunate in that it looks like you've rung up a tab of \$16,000 and you've got, obviously, I'm confident, a good lawyer and a sympathetic one and a caring one, one who's doing all the things that a good lawyer should do. But shouldn't there be a role for lawyers, even in the no-fault system, to guarantee that victims like yourself can have access to legal counsel as they so often need it?

Ms Felteau: Absolutely. I'm not even anywhere near finished my fight. God knows how I'm going to pay my legal bill at the end of it. First of all, I have a serious impairment. It's highly unlikely I'll ever work at the level I did before. On a reduced income, how am I supposed to pay for that? On top of it all, if I can't get services now and have to pay for a large number of them out of my own pocket, what's in store for me down the line?

Mr Kormos: That's right, and the private corporate insurance companies are banking on that. They know there's a huge chunk of victims who are never going to access what they're entitled to because they won't be able to afford counsel and because the system doesn't provide

them with counsel, and that's called "bad faith." In a tort system there's an opportunity to take care of bad-faith operators. Unfortunately, my impression is that the vast majority of insurers in this province rely on bad faith to fatten their wallets at the expense of people like Ms Felteau and so many others. It's tragic.

Mrs Marland: Listening to Mr Kormos's analogy of Dracula in charge of the blood bank—listening to you, Peter, representing your caucus, is like listening to the bumble-bee at the picnic. Your perspective is not that held generally by your party, I think.

It's interesting to hear the comments this morning. First of all, Ms Felteau, I want to really congratulate you on your presentation. It is impossible for us to sit here and listen to you this morning and try to visualize that you have any impairments at all. Your very articulate brief is very much appreciated by the government, and I wanted to say, in particular, last week we sat for four days and received a lot of briefs and certainly not the majority of them had a summation of recommendations at the end, and that is particularly helpful. So I wanted to thank you for that.

It seems to me, as you have so beautifully expressed, that you have been fortunate to have the support in your case of your parents for you to have come through what you have. I know that what you are expressing and what we can try to understand and try to appreciate, if we haven't been through the same experience, is the fact that what you're saying is in your case you had that good fortune, but what about all the people who struggle in what essentially is a war of rightful compensation.

It's actually compensation and security that we think we're buying when we buy our insurance, but if you end up fighting after you've sustained any kind of injury, sometimes the impairments that are the most difficult to fight for are also the ones that are the most difficult to see. We heard last week from several brain injury groups and associations, and they said that for them the most hurtful and the most demeaning of the whole experience wasn't sustaining the injury itself as much as not being believed.

I think your idea of consumer-driven accreditation and some of your other recommendations here are very clear. I'm just wondering if there's anything you would like to add that could get us, as a government, into a position where we can give the kind of leadership to ensure that the industry and the people who work in the insurance industry do not subject people to that experience of feeling that they're just not being believed.

Actually by the end of last week, and this will probably offend the automobile dealers as well, I couldn't help but think at the end of our hearings last week that the analogy that came to my mind, because I've experienced it more than once in my lifetime, is where you buy the car at the front in the salesroom and the salesperson is very charming and very helpful and guarantees you all kinds of service, and it's a big thrill when you buy that new car, then when you take it back, when it's got the noises and the rattles and the squeaks—

The Chair: Is there a question, Mrs Marland, please?

Mrs Marland: —when you take it back at the end to the service department, that's where the battle begins. I

think this is an analogy to the subject area that we're dealing with, so my question to you was: Is there anything else that you can add?

0940

Ms Felteau: I can. I think one of the keys is education. I'm very concerned about the fact that I've had eight claims examiners who have worked on my file, six within the first year. There was a revolving door there. Dealing with those people, I could see that they weren't highly educated, they didn't have the critical thinking skills that higher education brings. They didn't have a medical background, so they should be in no position to be making decisions about what my doctor, my neuropsychologist, my neurologist, my psychiatrist say. It's very scary to have that situation happening.

Secondly, I guess it just goes back to the education. My insurance company won't even accept phone calls from me. They prefer everything to go through my lawyer. How are they ever going to understand my situation? When I write letters, they don't always get responded to, or if they are responded to, it's horrible treatment, how they treat me and all of that.

I think if more consumers found the courage and the energy—because, my God, what it does to you to have to face this day in and day out for years upon years is horrendous. If those damn insurance companies had to sit eyeball to eyeball with me and hear what this has done to me, I think we might see a little bit of movement. Barring that, and I don't say this facetiously, but I think there's going to have to be a critical mass of people with brain injuries coming forward or insurance company employees themselves sustaining brain injuries to find out what it feels like. Because you can't tell, thank God, most of the time that I have a brain injury.

In my case then let's get on with it, because I've been raring to go since day one to get back at my life, and I have tried so hard to do that and have faced roadblock after roadblock after roadblock. It's nuts, but the days that this does affect me are real and they're horrendous. Laypeople cannot, an insurance company cannot determine what my difficulties are and they should not be given that responsibility to do so.

The Chair: Thank you very much for your presentation today. We certainly appreciate your input into our deliberations. It was an excellent brief.

I believe the committee will take a 15-minute recess.

The committee recessed from 0944 to 0958.

MARKUS WALSER

The Chair: If we could reconvene, we are ready to proceed with Mr Walser. We will have 20 minutes together. I understand you have a brief to read. We will fill any remaining time with questions. Thank you very much for joining us today and please proceed.

Mr Markus Walser: Good morning, Mr Chairman and members of the committee. I would like to begin by introducing myself. My name is Markus Walser and I am a physiotherapist who owns a private physiotherapy practice in Thunder Bay. For eight years, I have been treating clients who have sustained injuries in motor vehicle accidents. I have treated clients under all different insurance benefit plans that have been in place during that

time. I am pleased to see that there is a new proposal for changing insurance benefits. We need a plan that will allow for appropriate compensation while keeping automobile insurance affordable for the residents of Ontario.

There are three main points of this legislation which I would like to address. The first is related to the proposal for the use of rehabilitation treatment plans approved by the insurance adjuster. My practice belongs to a group of over 50 practices in Ontario which have a standardized approach to treatment of clients injured in motor vehicle accidents. We have developed a system similar to the rehabilitation treatment plan in the draft legislation.

We feel that communication between the insurance adjuster and clinician is very important. We have been forwarding treatment plans to the insurance adjusters for almost one year now. Our protocol is such that we ask insurance adjusters to review our rehabilitation plan and send their responses and approval to us within three days. We ask that they forward their opinions to us via fax or telephone. We rarely have received a response from an adjuster regarding the treatment plan. Several of the adjusters we did receive a response from told us they were too busy to send us confirmation.

The draft legislation proposes that every practitioner must develop a rehabilitation plan that must be approved in 14 days. Based on our experience, I feel that this expectation will be difficult for insurance adjusters to meet within the stated time frame and will have a negative impact on our clients. Holding up treatment for 14 days potentially increases the length of rehabilitation. Research has demonstrated that early intervention decreases the length of rehabilitation. We have only recently been able to minimize the time lag from the motor vehicle accident to initial physiotherapy assessment, through ongoing education of referring physicians. This proposal further delays the start of treatment, time during which the client will be receiving accident benefits while not receiving any treatment.

The rehabilitation treatment plan proposal creates another problem in that it allows the insurance adjuster to determine approval of treatment. Accountability of the clinician is very important. All clinicians should be required to provide care that is both appropriate and cost-effective. The need for evidence-based practice is being demonstrated in all facets of our clinical work. It may therefore be an appropriate standard to apply to this draft legislation. If all clinicians adhere to appropriate standards of practice, they should make clinical decisions, and not the insurance adjuster.

The second area of concern deals with the lack of guidelines regarding conflict of interest in the draft legislation. The notion of informing the client that a conflict of interest exists is definitely not enough to protect the public interest. The client must trust the clinician in order for an effective therapeutic relationship to exist. They therefore rarely will question the clinician's motives when they are informed of the conflict. There are numerous situations where there exists the opportunity for the financial interest of the clinician to be a higher priority than the best interests of the client. Referral for profit cannot be allowed to continue. This system is definitely responsible for some of the increase in rehabilitation costs. No

practitioner, no matter what their profession, should ever be allowed to make a referral for profit. This cannot wait for the Ministry of Health guidelines; it must be part of this legislation.

The final area of concern is with the dispute settlement mechanism. The use of designated assessment centres mediation and arbitration needs to be available in a timely manner. The present system has had significant delays. I have concerns that the system will continue to be too slow. If an insurance adjuster disapproves of a treatment plan and pushes the process all the way to arbitration, it could take two years to get approval. Treatment plans for complicated clients are more likely to be contentious. These clients cannot wait two years for treatment; the chances of a client making significant progress after a delay of two years is minimal.

I would like to offer my support for the following items in this draft legislation that I feel are an improvement over the current automobile insurance legislation. These concepts are ones that will have a positive effect: the decrease in the limits on income replacement benefits; the implementation of a 26-week waiting period for non-earner's benefit; the reimbursement of actual expenses under the caregiver benefit; the anti-fraud measures; and the reduction in basic medical and rehabilitation benefits for non-catastrophic injuries.

I hope that the goal of passing legislation that is fair and cost-effective can be realized. I also hope that the province of Ontario will not require new legislation in the next few years. I would be nice to have some stability. Thank you.

The Chair: Thank you very much, Mr Walser. We have about five minutes each for questions. Could we start with the third party.

Mr Kormos: When you're talking about conflict, because much ado has been made, and not inappropriately so, about lawyers and their association with rehab clinics, I trust that's one of the areas you're concerned about.

Mr Walser: Yes.

Mr Kormos: Similarly insurance companies and rehabilitation, because we've heard over the course of last week and once again today that an insurance company has a real strong interest in paying out the least amount of money that it can; I trust that you don't think insurance companies should be setting out treatment regimens or protocols either then.

Mr Walser: I feel that anybody referring a client to a treatment facility should not financially gain from that. An insurance company should not be allowed to own a facility, a lawyer should not be able to own a facility and a physician should not be allowed to do that. But by the same token, I shouldn't be allowed, as an owner of a practice that also has massage therapy services, to be able to refer on to my massage therapist and profit from that referral. Nobody should profit from the referrals.

Mr Kormos: You raise of course the issue of rate stability, premium stability. You must have been around during Bill 68, back in 1989 and 1990. We've gone through governments so quickly over the course of the last few years, and I'm as sensitive to that fact as any-

body could be. But when the Peterson government promised control on premiums with Bill 68, it didn't happen. And then the New Democratic government, after it had abandoned public auto insurance with Bill 164, promised 4% premium increases; it didn't happen then.

Now one of the problems here is, you see, the IBC predicts that with this scheme we're looking at something like 7.6% a year in premium increases. That seems to be their minimum. Now notwithstanding that IBC, the Insurance Bureau of Canada, says that, Zurich Insurance, the second-largest insurer in the province of Ontario—and certainly that, in my view, gives it a capacity, because it has such a large number of motor vehicles insured, to understand the impact—talks about premium increases twice, almost three times that 7.6% suggested by the IBC. There's nobody I've talked to who considers anything from 8% to 20% premium increases to be a stabilization of rates. How do we respond to that?

Mr Walser: The only thing that I can address is the area that I have some expertise in, and that's rehabilitation benefits. I realize as a member of a service provider in that field that we have, by the way we've escalated the costs within that, increased the cost of automobile insurance. A proposal where we make sure that we provide good quality care that's evidence-based practice care, that we don't have the ability to get into conflict-of-interest situations, will help to keep rehabilitation costs down. That's one area that's going to affect rates. Other things are outside my scope of expertise and I can't address them. It would make sense that if we decrease costs in other areas, we can probably help to keep the rates down. But my recommendations are that we eliminate conflict of interest in that we go to a system that makes clinicians accountable for what they do. Having the insurance adjuster make a decision on whether or not treatment's appropriate is not something that should happen. Clinicians are the best to determine what should be clinically done.

Mr Kormos: Because the insurance adjuster, as often as not, doesn't know diddly-squat about the required medical or rehab treatment.

Mr Walser: Their education is not in a medical field. Whatever their training, they're trained to be insurance adjusters; they're not clinicians.

Mr Kormos: I trust then you as well would be supportive of a victim being entitled, because of the very special nature of medical treatment and rehab, to pick the therapist, doctor, treatment centre, because of the very unique and subjective nature of matters of trust and reliability and rapport.

Mr Walser: I think we definitely need to have choice within the system, but I think we also need to continue to educate the clients of the fact that they do have choice and also to educate them as to how can they decide whether a clinician is doing a good effective job or not.

Mr Kormos: You see, we've heard from people even trying to access the no-fault end. Basically, Bill 68 took away most rights of the innocent accident victim. Bill 164 finished the job off and left the innocent accident victim without any recourse to courts short of the illusion of recovery for pain and suffering. What does the victim

do who needs an advocate, who's fighting with an insurance company that has, as I've said, short arms and deep pockets? They're profit-motivated. How do we give that victim the representation, the advocacy that he or she needs?

Mr Walser: Again, this is not totally within the scope of my area of expertise, but having worked under the system of pre-no-fault where we were in a pure tort system, I don't want to see it go back to a true tort system simply because the lawyers often drove the type of rehabilitation people got. When you were still in litigation, your goal was not necessarily to get better but to increase your settlement. We've discovered in catastrophic injuries where people have been under OMPP and through Bill 164 that it takes such a long time to go through the legal system that the legal system is not a great area of recourse for somebody who needs funds. We need to make funds available to people for appropriate treatment, for cost-effective treatment, and if there's additional financial loss or the right to sue for pain and suffering, that's going to be deemed by the politicians. That's outside my area. I just want to make sure that people get appropriate treatment that's going to be cost-effective in a timely manner.

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Mr Kormos: I was going to quote Charlie Harnick, the Attorney General, but I'll have to wait till the next one.

The Chair: Charlie's probably pleased about that. Could we move to the government side. Mr Sampson.

Mr Sampson: Thank you very much for your presentation. I guess we're going to hear this throughout the day from Mr Kormos about public auto insurance and how it produces the least expensive rate. I should bring his attention to a survey that was done by a private firm with respect to the costs of operating a 1996 mid-sized vehicle in various cities across Canada. The most expensive was in Montreal where, by the way, they have a public auto program, and the least expensive was in Alberta, Edmonton in fact, where they have a private auto program heavily focused on tort. I will bring that to the attention of my friends at Zurich, who are telling me that the tort component produces escalating costs in auto insurance etc.

Mr Kormos: Bring tort back.

Mr Sampson: But in Montreal, it says here, "High costs are driven not by fuel prices but by having the highest auto insurance rates in Canada." This is the program that a lot of people said we should follow, that we looked at and didn't follow.

Mr Kormos: Because it's not an NDP system.

Mr Sampson: But let me talk briefly about this issue on conflict of interest. It's an item that we struggled with, and one of the conclusions we came to was it would have been very difficult, and I think it's almost impossible frankly, to legislate out conflict interests, because you could say, "All right, you're not allowed to refer to your own clinic for profit," and what will end up happening is that some individuals will refer to their friends and it'll be cross-referrals and we wouldn't have solved the problem.

I think the solution to the problem, though, is to have some confidence level created in the auto insurance industry by the insurance companies themselves, by the practitioners themselves and by the claimants that the service levels being provided by the various health practitioners are meeting some appropriate guidelines.

That's why we are looking very carefully at the process of accreditation, and this would be accreditation where all the stakeholders involved would have a say, because I think that brings some ownership back, as I have been saying, into the system so that the auto insurance companies will have confidence that a certain health care provider, since they are accredited and they are involved in that accreditation process, is providing the appropriate treatment.

Right now, as you know, we don't have that. I think that would be a giant step in the right direction and it is in fact one of the items that this DAC committee, as it's called in the draft legislation, could deal with right away. But do you see value in the accreditation process? Do you see any value in making sure that practitioners, at least as it relates to auto insurance, are accredited?

Mr Walser: I have a lot of respect for your position on the fact that we as clinicians in the insurance industry need to take some responsibility for conflict of interest. I don't feel that necessarily legislation must be put in, but we have to have some system. Accreditation may well address it, but we need to address this issue earlier as opposed to later.

Now, we've had a number of statements as to when the MOH guidelines are going to come out. They were going to come out in the late fall, they were going to come out in January, then in March. We haven't seen anything come out. Whether we go through an accreditation process, which I think has a lot of value to it because it can involve all the stakeholders, or whether we go through a legislative process, I think we need to address the issue because I don't think that the clients themselves are capable. I'm not saying the public cannot be educated, but the big issue is I have to trust the clinician I go to or the therapeutic relationship won't exist. If I suspect them of doing underhanded things all the time, it won't work that way. So if I know that there isn't going to be a conflict of interest because there's something to take care of that in the first place, I can continue to trust my clinicians.

I need my clients to trust me or else I can't do my work. But that open trust also allows me to do an awful lot of things if I decide that I'm going to be unethical. Right now, nobody is trying to stop anybody from doing that.

The Chair: Thank you very much. Could we move to the opposition.

Ms Castrilli: Thank you, Mr Chairman. As you know, I'm not generally given to making comments before this committee, but I feel that I must on this occasion, since Mr Kormos brought up the issue of insurance under a Liberal government. I'm looking specifically at figures presented by the insurance bureau and figures that have been prepared with respect to the ultimate cost per vehicle.

In both the rates and the cost, what the charts show is that from the period of 1990 to 1994, which is that time frame that Mr Kormos was speaking about, both the cost and the premiums decreased. I think that's important for us to have on the record, that if there have been escalations in those two areas, they in fact occur post-1994 when Bill 164 took shape.

I have a question for you, since you are a practitioner in this area. We've had a great deal of input on what constitutes catastrophic injury and how this might be amended. There are a great many victims, as you know, who feel that the definition may be too limiting. I just wonder, from a practical perspective, how you view it.

Mr Walser: I think that the definition is limiting, very specifically around head injury, and there is another group coming on after me that is discussing further how mild and moderate head injuries will very often need more than \$75,000. By the definition that's presently in the legislation, a majority of those people we deem to be mild and moderate head injuries would not fall under the catastrophic category.

In terms of, if I separate out traumatic brain injury from general orthopaedic injury, which is the large bulk of what we do, do I feel that we have a reasonable definition and that \$75,000 will probably cover the expenses? I don't have a lot of concerns. I was very concerned when the original proposal came out at \$25,000, because I know that a complicated orthopaedic injury can chew up that money very appropriately and very quickly. But our definitions in terms of what is catastrophic regarding orthopaedic-related injuries—I think it's reasonable. We're always going to run into situations if we have something in place where under mediation or arbitration or if somebody makes a ruling and says on the bottom, on the last category for catastrophic, there is some leeway to allow certain people in.

The overwhelming majority of clients I would see would fit very well into this two-tier system. Where I have some problems—and I treat head injuries in my practice as well—is it's a delineation there and there's another presentation that can probably speak more appropriately to it than I can.

Ms Castrilli: So you'd like a little more flexibility at the lower end.

Mr Walser: Yes, traumatic brain injury especially.

Mr Phillips: I want to follow up on something I think you said earlier. I think you expressed some concern that some people may not participate as actively in rehabilitation as they might otherwise if there is an opportunity to sue for significant economic loss. I don't know whether I interpreted you right or not. But you've been in business now since 1988, I gather.

Mr Walser: My personal practice has been open two and a half years. I've been in private practice in this city for eight years. If I can clarify for you, by an example, it was pre-no-fault, pre-OMPP, and we're talking in the mid to late 1980s. You knew when one of your clients had been to see their lawyer the day before. Typically they came in and presented differently to you the next day, because the lawyer was saying, "You've made some improvements, but this is going to potentially affect the size of our settlement." We tended to draw things out a lot more, because the settlement process takes a long time.

Now, these were a lot of settlements in the \$5,000, \$3,000, \$7,000 range, which are eliminated because of the cap. So are we going to have that? As a clinician, does litigation present a difficulty to me? Yes, because the lawyer is another party who is trying to affect a different thing. They're trying to maximize the financial return for the client, and maximizing recovery is not always conducive to maximizing the financial gain. Am I saying we have a whole unethical system? No. But those two aren't always going in the same direction. We're trying to get people back into a normal livelihood as quickly as possible. If the lawyer is trying to get a good settlement for somebody, then they're trying to maximize that. They say, "If we get an extra month out of this, we'll get this."

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The other concern I have is, what happens if we go on to a system which is being proposed where the lawyers get a third of the settlement? There's that much more onus to make the settlement bigger. I'm not accusing lawyers of being unethical here, but they have a larger financial stake in the outcome of this thing. If I get a \$50,000 settlement as opposed to a \$40,000, I get this much more money.

It's a difficult system. Tort needs to be part of this system because I see people lose out, especially the people at the end where they're not catastrophic but have had a difficult and long recovery. They have had financial losses in addition to what the legislation covers. They should be able to get compensated for that.

By the same token, if I've had two years of having my life turned upside down and I'm going to go well above and beyond the \$15,000 cap that I have to break before the insurance company has to pay, I think a client should be justified in having the right to sue. But we had an awful lot of trivial lawsuits that made it difficult as clinicians in the old system. We don't want to see that come back, but we want to see people be able to get compensated for having their lives absolutely disrupted—the innocent victims. And I see those people: the person who gets hit by the impaired driver. The impaired driver does not get injured and they have their life turned upside down for two, three, four, five years. If we don't have some avenue for those people to get compensated, then we're not being fair by them.

The Chair: Mr Walser, I appreciate your presentation before the committee today. Thank you for joining us.

Mr Walser: Thank you for your time.

Mr Kormos: Thank you, if I may, Mr Sampson speaks of Quebec, not fully revealing that Quebec is a blended system with partnership between a public system for bodily injury and private sector coverage for tin and glass. But I say this to Mr Sampson: I will debate him any time, before or after June 21, anywhere, on the issue of public auto insurance, and I challenge him now to do that before any bill by this government is put before the Legislature, because the arguments on behalf of public auto insurance will prevail any day of the week.

The Chair: Perhaps we could have that debate, Mr Kormos, when we're not infringing on other peoples' times.

SERVICE PROVIDER AGENCIES FOR PERSONS LIVING WITH THE EFFECTS OF ACQUIRED BRAIN INJURY

The Chair: I would like now to welcome the service provider agencies for persons living with the effects of acquired brain injury.

Welcome to the standing committee on finance and economic affairs and our inquiry into auto insurance. We have 20 minutes together. If you would identify yourself, please, for the Hansard record. If you have a brief, we can start there, and any time remaining we can use for questions. Please proceed.

Ms Alice Bellavance: Good morning, Mr Chair and members of the committee. I'll introduce our panel first. I'm Alice Bellavance and I'm a registered practical nurse. I'm also the executive director of the Organization for the Multi-Disabled, which is a community-based rehabilitation service for individuals with brain injury. On my immediate right is Dr Mary Ann Mountain, who is employed at St Joseph's General Hospital, which is also an AVI provider, and she's also a clinical psychologist and neuropsychologist. On my far right is Kim Wedgerfield, who is a consumer of the system.

I'll begin with our presentation. I believe you have a copy of a brief that was circulated. This submission is made on behalf of a collective group of agencies—the two that I just mentioned—as well as health practitioners, regulated health professionals and consumers.

Initially, I want to speak to the impact of traumatic brain injury, particularly as it relates to northwestern Ontario.

Approximate incidence, nationally/internationally: It is recognized that there's an incidence rate of 199 per 100,000 of population. However, in the district of Thunder Bay the incidence rate is much higher; it's 374 per 100,000.

Approximately half of traumatic brain injuries are related to MVAs.

The majority of those who are injured are between the ages of 16 and 34, and the survivors often live normal lifespans.

Common sequelae often include severe cognitive impairment; severe physical disability; communication deficits; complete inability of the victim to take care of himself or herself in areas such as eating, dressing, toileting and other basic functions; aggressive/assaultive behaviour and other behavioural changes including sexual inappropriateness, impulsivity, irritability, impaired memory and judgement, apathy, depression and substance abuse.

In our area, we only have one lead/trauma hospital and it serves a huge geographic area of 525,907 square kilometres. This decreases the ability for individuals to access emergency services because of the geography. There are also transportation difficulties. In a lot of northern remote communities, we have to rely on volunteer ambulance services.

There's limited access to specialty services as well as being able to access all of the various services along a continuum to complete recovery.

There are specific service issues to northern, remote first nations communities as well.

Recovery from complex injury to the brain can take years. Therefore, treatment plans should not be time-limited; however, they should be reviewed regularly over the course of a year. I know that one of the common denominators that we keep seeing in the documentation is the 18 months to two years, and that doesn't apply to a severe brain injury.

If associated disorders are not adequately treated in the early stages, initial effects may be compounded by the sequelae noted above.

Many survivors with mild to moderate injuries suffer severe functional limitations without appropriate and timely rehabilitation.

Service provider agencies in this area currently are serving approximately 70 to 100 participants per year.

During the acute rehab phase, the cost of services can range anywhere from a few thousand dollars per month to \$30,000.

The average cost of long-term care per participant is \$130,000 per annum, ranging from approximately \$80,000 to \$180,000, dependent on individual needs.

In the north we can add additional costs for travel, accommodation, prolonged treatment time due to related travel and, in the extreme, where individuals have to move to regional centres to access service.

Dr Mary Ann Mountain: We have a couple of concerns about the proposed legislation, first the absence of provisions for immediate payment for rehabilitation. Most of the physical recovery from brain injury occurs during the first 12 to 24 months after the injury. If adequate treatment is not provided to survivors during this critical period, the possibility of the development of severe behavioural and emotional disorders is greater. If these disorders are not treated in the early phases of rehabilitation, the treatment may be extremely difficult and costly for individuals, families, institutions and society.

Additionally, without added provision for the often lifelong rehabilitation and support needs of the survivor, it has been demonstrated that many of the disorders associated with TBI—for example, depression, irritability, substance abuse—increase over time. The absence of sufficient supports has far-reaching financial and social consequences.

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The proposed legislation does not permit immediate access to critical rehabilitation and support needs of the survivor and, again, many of the disorders associated with TBI will increase over time.

The proposed legislation does not permit immediate access to critical rehabilitation services and supports. There, again, we look at a greater long-term burden on the public system, with exorbitant and unnecessary institutional care costs. The decision to treat should be clinically driven, not based on an insurance or a business rationale.

The application procedures proposed may cause a lengthy wait between injury and the start of rehabilitation. Sometimes an injury is not diagnosed as catastrophic but becomes catastrophic because proper rehabilitation services have not been provided. Vigilance is required in the immediate management of brain injury to ensure the cost-effectiveness of resources invested in this treatment. Additionally, an effective and timely dispute resolution

mechanism needs to be in place. The current system has many problems and there is little in the proposed legislation to address it. The Ontario Brain Injury Association spoke to a panel to deal with disputes in its submission. We would support the mechanism as proposed by them.

The legislation should provide for a mandatory payment of initial rehabilitation costs for traumatic brain injury victims similar in principle to the mandatory prepayment provisions set out in subsection 42(6) of the proposed regulations.

Ms Kim Wedgerfield: The "catastrophic impairment" definition must include mild and moderate injury. The \$1 million in medical/rehabilitation coverage and the additional \$1 million in attendant care coverage largely addresses the need of those whose injury is catastrophic. In addressing the needs of the vast majority of individuals who have sustained a brain injury, however, the legislation falls short in the following areas:

Victims who are not deemed catastrophic based on the Glasgow coma scale may not receive adequate payments but will be eligible only for payments on a reduced scale, which will be grossly inadequate in some cases. Other indicators of severity that can be considered are: period of PTA—post-traumatic amnesia; length of loss of consciousness; skull fracture and damage to the underlying dura; usage of World Health Organization definitions for impairment, disability and handicap. It should be noted that in remote communities with volunteer emergency personnel, GCS may not even be applied, or hours later at an emergency department; however, not always consistently.

Allocation of funds between medical/rehabilitation coverage and attendant care coverage are not flexible enough to allow for ongoing, comprehensive rehabilitation. In some cases, all medical/rehabilitation dollars may be exhausted prior to the need being eliminated, and the funds for attendant care may not be adequate to continue rehabilitation efforts due to the monthly cap on usage of these monies.

Attendant care is not adequately defined. Attending care should be defined to include the requirements of TBI victims for the assistance of another human being for the completion of daily activities of living.

The \$2-million cap may in some instances be grossly inadequate.

The lifetime care costs of a TBI victim may increase over time, beyond the proposed limit. The legislation must provide for periodic increases in coverage to ensure that costs can be met.

Ms Bellavance: In conclusion, we realize and validate the need for effective cost containment set out in the proposed legislation, both for the insured and the insurer. However, it should not be at the expense of innocent victims. The legislation will increase costs, both monetarily and societally, to taxpayers. To the extent that a traumatic brain-injured victim's care is not covered by benefits, insurance or the victim's personal resources, the government of Ontario will be obliged to pay for the direct costs of care—medical/rehabilitation and attendant care—chronic hospitalization and indirect costs such as dependants, costs to the correctional system and other societal costs. Therefore, it is of interest to all to ensure that TBI victims can obtain adequate coverage.

The development of standards of care and outcome measures with the view to efficacy is a goal that we should actively work towards with providers—whether they are private or public, not-for-profit or for-profit—the insurers, government and consumers.

The balance of the brief just lists who the providers, professionals and public were that submitted this brief. Thank you.

The Chair: Thank you very much. We have about three minutes each for questions, if we could start with the government site.

Mr Ted Arnott (Wellington): Thank you very much for your recommendations. They'll be very helpful to the committee over the course of our deliberations. There is one statistic that frankly struck me as startling. You indicated early in your brief that the approximate incidence of serious brain injury or traumatic brain injury in the Thunder Bay district is almost double the national average. I just wondered how you can account for that. We look at the incidence of these injuries certainly from a human point of view as well as an economic point of view, and if we can reduce the incidence, it's in the public interest, obviously.

Ms Bellavance: Want me to answer that one? Part of it's just the geography, the distances that we have to drive, the types of roads we have to drive them on and also the climatic conditions that we have to drive them in. If you think this statistic is startling, the Ontario Brain Injury Association did a study in northeast Ontario and there's a section of highway—I believe it's also referred to as the Devil's Corridor, Highway 69—where the incidence rate is 469 per 100,000. Part of it has to do with the conditions of our roads; part of it has to do with geography. The kinds of things we do for a living in northern Ontario that make us have to drive those roads in the first place; if you're working in mining and forestry, you have to drive a long way to get to work.

Mr Joseph Spina (Brampton North): Thank you for your presentation. I wanted to come to the last paragraph where you talked about, "The development of standards of care and outcome measures with the view to efficacy" as a goal we should be working towards, and another statement you made that said, "The decision to treat should be clinically driven, not based on an insurance/business rationale." Is that kind of an endorsement for a treatment plan concept? The previous presenter said they have a system where they develop a treatment plan for the patient but part of the problems that are being experienced right now—and I know that Ms Felteau experienced it earlier as well—was the early intervention factor. Is there a role for the DACs here? Should they be beefed up? How could that maybe be structured to make it an earlier intervention process so that treatment can get under way as soon as possible?

Dr Mountain: I'll address that one. I think there are two points to be made there. One is for the individual who is identified early on, and usually that does involve being admitted and treated in a hospital, in a neuro-surgical unit. The issue there is, once they're discharged from the hospital, can we establish a continuity of care so that they're not sitting around waiting for someone to approve a treatment plan? The second issue, though, is

the people who are not identified early on. Usually these are people with quite severe orthopaedic injuries and a relatively mild brain injury. So even though it will be noted on the hospital record that a head injury has occurred, nobody thinks to tell the person until a year or a year and a half later, and by that time they're so wound up at the problems they're having that you have a greater difficulty.

I think the issue here is getting a mechanism in place, and perhaps the DAC is the place to start that, where the transfer from the hospital to the community can be made smoothly and also where there is an earlier identification, perhaps a clinic where people are just screened if they have come to hospital with a concussion, so that we know what we're dealing with up front. There's no question that the longer you delay treatment, the more costly it is.

The Chair: Can we move to the opposition.

Ms Castrilli: Thank you very much for your presentation. It's very thoughtful. This is our second week of hearings. During the first week we heard from many, many deputants, but it's our first trip to northern Ontario to hear the concerns of people here. I'm particularly struck by two aspects of your presentation where you deal with the impact of traumatic brain injury in this area. I wondered if you might elaborate on them, because it's the first time we have encountered it. Specifically, you talk about, "specific service issues for northern, remote first nations communities." I think that would be interesting for us to hear a little more about. The second point deals with the additional costs in the north for things like travel, accommodation, treatment and so forth, and what you think the figures are; how much it adds to the costs of people you treat.

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Ms Bellavance: As it relates to the first nations communities, I think quite often once a person is medically stable they will return to their reserve. But the services are extremely limited. We've done some very long distance work with Big Trout Lake and Kingfisher Lake and some of those very remote communities. Not only are we dealing with the issues of isolation and distance, but we're also dealing with the issue of culture and whether they want to deal with our type of rehabilitation. So it's very compounded.

We find that many individuals don't usually attempt to access the more traditional rehabilitation services that we're familiar with. I think one of the things we'll have to look at is how we adapt our rehabilitation to meet their cultural needs. Maybe then we can start addressing some of the needs of the folks on the northern reserves, because right now we're doing not a very good job.

Ms Castrilli: So it doesn't happen now?

Ms Bellavance: It doesn't happen. They tend to just go home and, because they may experience significant behavioural issues, then quite often what happens is they end up in the corrections system. For those individuals who are significantly physically compromised, they become homebound, and it creates a toll on the family in terms of them providing care.

There's a situation, I know, on one of the remote reserves where the caregiver gets so exhausted that the

individual then is admitted to the hospital in Red Lake for anywhere from two to three weeks every couple of months just to give the family respite, which is not an appropriate use of an acute care facility either.

Ms Castrilli: What would your recommendation be around that?

Ms Bellavance: I think we need to do some real work with first nations communities. Whether they themselves learn how to do the rehab or whether we adapt ours to meet their needs, I don't know. There's no easy answer. We're facing those issues not just in the rehab but also in the long-term-care sector. There's sort of a parallel planning system going on right now for long-term-care services as well.

Ms Castrilli: And the issue of additional costs?

Ms Bellavance: Mary Ann, maybe you could speak to that one.

Dr Mountain: Just for an example, Fort Frances, which certainly has a hospital and has some rehabilitation personnel, does not really have anybody who is familiar with treating mild brain injury. So with a case that I'm familiar with and some of the other clinicians in this area are, we fly in and out or the families fly in and out. You can look at, for each clinician going in, just in terms of the flight, the accommodation, that sort of thing while you're there, anywhere between \$600 and \$1,000 per trip. That \$75,000 can get chewed up very quickly when you're doing that kind of travelling. If the family has to uproot and move, certainly you're looking at an even greater expense.

Ms Castrilli: So your recommendation would be that \$75,000 may not be high enough for the north.

The Chair: If we can move to the third party. Mr Kormos.

Mr Kormos: Your comment about the tendency, especially of private corporate insurers, to look at injuries solely from the economic point of view of course attracted my attention. I used to practise criminal law—and I should tell you, the more years I spend with provincial politicians, I realize how much more suitable the background in criminal law was for a career in politics.

I sadly noted what you reflected on, and that's not to suggest that all TBI/ABI victims find themselves in difficulty with the law, but, especially among young people, the frequency of ABI and TBI among young people who weren't criminals by any stretch of the imagination. If we want to talk about the cost, about the economics of an injury, let's talk about the real cost of not treating TBI and ABI, which is a multiple of the actual cost of treating them.

The impression I'm getting is that the sooner you treat the more effective that treatment or rehabilitation program is going to be, and I can't for the life of me understand how there could be this artificial dividing line between those who pass the threshold for catastrophic injury and those who don't quite meet it. The fact is that this legislation as it presents itself now says that a whole lot of ABI/TBI victims are going to find themselves untreated because they don't pass an arbitrary threshold which seems to have as its sole basis the profit interests of a private corporate insurance sector.

I find it incomprehensible that any member of this committee or any member of the Legislature could tolerate having ABI/TBI victims not treated because of the need to create that artificial dividing line. Clearly there are going to be some people who come just up to it but don't quite make it over that one point on the gradation. That is really tragic. Have I, in essence, got the thrust of your explanation on this?

Dr Mountain: I think so. Perhaps I could give the committee a very cogent example of this. A couple of the people who are being treated in Fort Frances now by a group of us out of Thunder Bay were injured in a very nasty accident. They were stabilized at the local hospital, airlifted to Winnipeg for neurosurgical intervention, lost probably about six months of being in school and still now have a lot of behavioural problems and learning problems. One of the kids in this accident had a Glasgow coma scale of four and one had a Glasgow coma scale of 15. I would defy you at this point to tell me which is which, based on where those kids are right now.

The Chair: Thank you very much for your presentation to the committee today. We appreciate your input.

THUNDER BAY AND DISTRICT LABOUR COUNCIL

The Chair: I would like now to introduce the Thunder Bay and District Labour Council. Gentlemen, welcome to the standing committee on finance and economic affairs. We have 20 minutes to spend together. If you'd like to make a presentation, then we could fill any remaining time with questions. Please identify yourselves for the Hansard record and commence.

Mr Don Hutsul: My name is Don Hutsul. I'm the president of the Thunder Bay and District Labour Council. On my right is Joe Hanlon, who is an executive officer of the Thunder Bay and District Labour Council. First of all, I want to welcome the committee to Thunder Bay. We've seen many of your members here in the past and probably will continue to see some of them in the future.

On behalf of its 11,000 members, the Thunder Bay and District Labour Council submits the following presentation on the Ontario government's draft auto insurance legislation to the standing committee on finance and economic affairs.

As for the issue at hand, it is beyond the endurance of the long-suffering public that this is back before the Legislature in 1996. It is less than two years since the insurance industry issued its public testimonials to the compromise reforms set out in Bill 164. The usual oaths were sworn by the leaders of this industry that they could and would live with the Bill 164 reforms as an alternative to a public auto insurance plan and that rates would be stable.

It is only some six years since these same insurance executives swore the same oath of rate stability to the Peterson government when it brought in its MPP insurance plan. It is now perfectly clear that the only constant in the auto insurance field is the unlimited ripoffs by them with the full support of this government. Their greed for profit is insatiable and their commitment to governments past and present is as worthless as smoke.

It is time at long last for a government of Ontario to recognize that automobile insurance must be regarded as a public utility. For the majority of Ontarians a car is essential. Ontario law rightly requires full insurance coverage as a condition to be licensed to drive. Given these realities, it is completely unacceptable that auto insurance continues to be regulated for the profit of private insurance companies instead of in the interests of the general public. The situation now is that the state forces people to buy auto insurance and leaves them at the mercy of hideous rate gouging.

The time has come to put an end to the pretence that this most treacherous of industries can be regulated. The time has arrived for a public auto insurance plan which will guarantee decent coverage at affordable rates for all drivers in Ontario.

If the stakes weren't so high for the average Ontarian, the government's draft bill would be a joke. The notion that benefits can be reduced by resorting to tort, the right to sue for financial loss, is totally absurd. Worse, everyone knows it's absurd. It only means that auto insurance premiums will once again be used to fatten the pockets of lawyers etc, who will be the only beneficiaries. All the studies undertaken by the Ontario government over the past 10 years have affirmed the basic reality that settling claims through lawsuits in court is the most costly and inefficient way to provide benefits to accident victims.

What is most disgraceful about this government's collusion with the insurance industry is that the money to enhance profits and legal fees is being confiscated directly from innocent accident victims. An innocent accident victim's weekly no-fault benefit under the current law will be drastically reduced. An injured victim on basic short-term disability benefits will go from 90% of net income to a maximum of \$1,000 a week to 85% of net income to a maximum of \$400 a week. On top of this, medical and rehabilitation benefits are being slashed for innocent accident victims to a tiny fraction of their present entitlement.

The government's argument that the restoration of the right to sue will redress any injustice is known by historical experience and extensive research to be completely false. The Peterson government introduced its own no-fault insurance plan in 1990 precisely because it was clear that Ontario's tort-based system had totally failed to provide adequate and timely benefits to accident victims and led to a wild escalation of insurance rates during the 1980s. The Liberal plan was itself flawed inasmuch as it provided benefits that were so low that insurance company profits went through the roof. Bill 164 was a negotiated compromise which was supposed to permit the continuance of a private insurance sector with stable rates and adequate no-fault benefits for accident victims.

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In Alberta, where there's primarily a tort-based system with some very limited no-fault benefits, rates increased on average 17.7%, 19.9% and 11.9% in 1991, 1992 and 1993 respectively. That translates to a 43.5% increase in just three years—the numbers are from the IBC, Alberta division. BC has a public auto system, primarily tort-based with some no-fault benefits. During the years 1990 through 1994 insurance rates increased by 41.4%.

Manitoba introduced a full no-fault system in 1994 due to the rising rates under a tort-based system. Therefore, I predict within four years Ontario's rates will increase up to 40% to 45% under your proposed tort framework.

I remember in 1991 when the insurance companies placed ads in the newspapers saying, "Your car insurance. It's working better now and we can make it better yet." Really? If that is so, who is it working better for? The province's property and casualty insurers whose profits soared to \$229 million during the first quarter of 1991, while many innocent victims couldn't collect a single penny for pain and suffering. Pretty self-serving, but then you have \$229 million in quarter profits and the other side of this story, the victims' side, has none.

This legislation will not lead to lower premium rates. You have only said this legislation would bring improved rate stability, which we've heard for the last 10 years. In fact I see our rates skyrocketing with the return of the tort system, plus costs for lawyers and courts. I see more costs when you talk about the options involving private arbitrators. One can see more costs when the government will be able to recover costs incurred by the public health system from insurers, who will then pass on those costs to me and everyone else who drives.

I have seen and read the government's auto insurance draft legislation highlights. Insurance companies, lawyers, arbitrators and brokers stand to gain a windfall. The insurance companies are now competing with the banks for record profits. I, for one, have had enough.

The Chair: Thank you very much. We have a round of four minutes. Could we start with the opposition, please.

Mr Crozier: Thank you, gentlemen, for your brief. You've certainly been very descriptive in your position and how you feel on auto insurance and what the effects of this proposed draft would be. I only note for interest that you are suggesting it's time to recognize that the automobile insurance must be regarded as a public utility. Well, if it is, it will probably be sold off shortly to private industry, so you'll be right back where you started again.

More seriously though, you've suggested that, "All of the studies undertaken by the Ontario government over the past 10 years have affirmed the basic reality that settling claims through lawsuits in court is the most costly and inefficient way to provide benefits to accident victims." Do you have, from preparing your submission, any of those reports that you might share with us?

Mr Hutsul: No, sir. I wish I could, but I have had a serious number of barriers, I guess, since I found out I was going to make this presentation. My secretary had booked holidays and I was in a quandary as to how to get the document prepared. I'm not a whiz kid on a computer or typewriter, so I spent two days on my computer preparing the document and lost it. Early this morning I had to get the secretary in to redo it. Then I found out that our printer was not attached to the computer, and she had to run from office to office. I apologize for not having that type of information.

Mr Crozier: Notwithstanding that, it must have been prepared with that as background material.

Mr Hutsul: Definitely.

Mr Crozier: So if you're able to, if you do recover it, I certainly would appreciate receiving it, if we could, because I think that's important.

You also, sir—I must be a bit defensive in this respect—suggest that the Liberal plan was flawed as it “provided benefits that were so low that insurance company profits went through the roof.” I shouldn't have said “defensive.” I should say we're supplied with information that's different than that. In other words, the insurance companies will tell us that their profits have not gone through the roof and that the premium is underpriced on the street, as they call it.

In any event, it was pointed out earlier this morning, and perhaps you would be interested, that in the period 1990 to 1993, information provided by the Zurich insurance company and the Insurance Bureau of Canada has shown that both cost and rates reduced in the period 1990 to 1993 and that then rates began to go up again in the period 1993 to the present. That's some information you may want to at least have a look at.

The other thing, and you comment on it, is the benefits have been reduced, yes, from \$1,000 a week to \$400 a week, although you can then, depending on your financial situation, because many people in Ontario don't make \$1,000 a week, buy up to that coverage.

Mr Hutsul: Exactly, with added costs; again, another added cost.

Mr Crozier: Perhaps not. I throw this out: We can presume, although we're not finding this to be the case, and it's a mystery to me, that the benefits are being reduced. I agree with you. Where the mystery comes in is that we're told by almost everyone that rates are going to increase on average 7% to 8% a year. Then there are a couple of other areas—

The Chair: Do you have a question, Mr Crozier? Your time is coming to an end.

Mr Crozier: No, that's fine.

The Chair: Could we move to the third party, please.

Mr Crozier: I don't know why you picked on Margaret and me. This guy down here doesn't always have a question.

The Chair: Mr Kormos has been very good on the clock. Mr Kormos, the floor is yours.

Mr Kormos: Brother Hutsul, Brother Hanlon, welcome. There, I've done it, I've said it. I've referred to my friends as brothers, as they are. You know what the Tories are going to say? They're going to say, “Look, Kormos and the NDP are in bed with organized labour.” I say to them, I'm pleased to be in bed with organized labour. It beats being in the back pocket of corporate Bay Street by any stretch of the imagination.

I tell you, brothers, once again this is an important perspective to bring forward. The fact is that the western publicly owned systems have delivered, with greater efficiency and with greater fairness, auto insurance that still has lower premiums than the private sector here in the province of Ontario.

For the life of me—although Mr Sampson now insists that he's misquoted by the press—of course you're always misquoted when you're reluctant or embarrassed about what you said—he made reference to the fact that maybe at some point even this government might have to consider public auto insurance.

You point out, and of course I would want to reinforce, that it was New Democrats who fought for a no-fault component in the tort system to make sure that all victims, whether at fault or not at fault, received rehab and wage replacement benefits, and you're right, the reduction from 90% of net to 85% of net, regardless of the cap, is still going to be a reduction in benefits for people who seek wage replacement.

My question is, Mr Sampson earlier, you see, in an effort, firstly insisted that he was misquoted—and maybe he's right; I give him the benefit of the doubt—but he also used Quebec's system, which is not a pure public system, because the private sector is in there like a bunch of dirty dogs, grabbing the most profitable end of it, the tin and glass.

I challenge Mr Sampson to a debate any time on the issue of public auto insurance versus what this government is proposing. I'm wondering if the Thunder Bay and District Labour Council would be pleased to host such a debate between Mr Sampson and me, so we could see really how indefensible this government's position is in opposition to public auto insurance. Would the Thunder Bay and District Labour Council be prepared to host that type of debate?

Mr Hutsul: The Thunder Bay and District Labour Council has a lot of expertise in formatting these types of debates and any other types of debates. We will be more than willing and pleased to.

Mr Kormos: Okay, I'd be more than pleased. Mr Sampson, that's an invitation from here in Thunder Bay. I'll come up here at any time it's convenient to the labour council and I'll even accommodate you, sir. We can talk about the real issues here: That's public ownership where there's fairness for premium payors and justice for victims, or more profiteering by the private sector.

What the insurance companies don't talk about is interest rates. That's really what it's all about. It's about taking billions of dollars out of the pockets of Ontarians, investing them and getting incredible returns, of course, depending upon the level of interest rates.

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Also, they don't talk about reserves, because the private sector insurance companies can generate reserves which create artificial losses. That's how they've been avoiding taxes for decades when making enormous profits. The fact is that nobody has been talking about those during the course of these committee hearings. That's unfortunate as well, because really the private insurance sector has an interest in high interest rates, because that's where they make their big bucks, and they were making, during the course of OMPP, billion-dollar profits annually, taken out of the pockets of every Ontarian. They stand to make even more under this legislation here. It's important that you and other working people continue to speak out against this sort of charade and illusion.

Thank you, brothers, for being here.

The Chair: If we could move to the government side.

Mr Wayne Wettlaufer (Kitchener): In so far as Peter's stance on government automobile insurance is concerned, he of course is running for leader of the party and naturally he has to do some posturing. However, I would like to bring to your attention something that you

said in your submission here. That is that BC has a public auto system, primarily tort-based with some no-fault benefits. Their premium increases have increased from 1990 to 1994 by 41.4%, which is just slightly lower than the Alberta increase—sorry, Alberta's is in three years.

I want to point out that John Kruger, who is the former chairman of the Ontario rating board, made a submission last week, and at that point in that submission he agreed with me when I pointed out to him that Ontario's automobile rates for comparable coverages were not significantly higher than other provinces with government-run insurance, especially when you take into consideration the fact that Ontario has more vehicles from the London to Toronto corridor than most other provinces. There is considerably more exposure to automobile insurance claims as a result of that.

The other factor that nobody has been able to come to grips with, either government-run insurance plans or private insurance plans, is how to control the cost of repairs. We see that new vehicles are costing anywhere from 30% to 40% higher than they were only four years ago, five years ago. We are seeing that to reconstruct a car in a body shop would cost four to five times as much as the initial cost of that car. That's because of the replacement price of parts from the manufacturer as well as the body shop's mark-up and of course the labour costs. Until someone can get a handle on how to control costs of repairs, automobile insurance rates are going to rise.

We've already heard that Rob Sampson has said that increases of 7% to 8% a year, which were predicted by the insurance companies last week, are not satisfactory, that we will make changes.

The point I'd like to make here is that this is draft legislation which is presented to the public for the public's input and for the input of the opposition and third parties so that we can come to grips with this problem, hopefully develop a plan which will bring costs under control and at the same time provide reasonable benefits for the average person.

There was also a comment made by the Liberals that under OMPP insurance costs were considerably lower. I wish to point out that insurance companies—

Interjection.

Mr Wettlaufer: Yes, I know. Insurance companies underreserved their claims under OMPP in 1990, 1991 and 1992.

Ms Castrelli: There is no disclaimer here. This is their document.

Mr Wettlaufer: I'm speaking from experience. I can tell you they made corrections to those claims in the years 1993 and 1994 and that did contribute to their loss pictures in 1993 and 1994.

That's all, Mr Chair. Thank you very much.

Mr Hutsul: I thought I was being asked a question. I just heard a statement.

Mr Wettlaufer: That was a statement.

The Chair: The members can use their time to either make a statement or ask a question. Did you have a concluding remark?

Mr Hutsul: I certainly did. I'd like to address this comment to Mr Sampson. I've got your speaking notes on February 9 in regard to auto insurance reform. If I can

quote, it says, "Currently we have a system of gold-plated benefits available to all those who are insured, regardless of fault." Can you explain "gold-plated benefits"? I'm not sure where you're coming from with that comment, because if you look—

The Chair: I'm afraid your time has expired.

Mr Hutsul: That's great. I think I'm allowed another minute, because I understand that you people are ahead of the game here a little bit. I think there are a few minutes. The one question I'd like to direct to Mr Sampson is that when you talk about all our gold-plated benefits, I can assure you that I wear no gold jewellery, have no gold fillings in my mouth, but if I look around the table I can spot a couple.

If we talk about gold-plated benefits, if you look in the cities of Vancouver, Calgary, Edmonton, Toronto, Montreal, we see 20-, 30-, 40-storey towers owned by the insurance industry. Not only one of those cities, not two, not three, not four, not five, but 10 and then some. What I'm trying to visualize is, who has the gold-plated benefits?

The Chair: Thank you very much, Mr Hutsul. We thank the Thunder Bay and District Labour Council for its presentation today.

ELAINE WOODWARD

The Chair: We would now welcome Elaine Woodward. Welcome to the standing committee on finance and economic affairs. We have 20 minutes together. If you would like to make a statement, we would then fill the remaining time with questions. Please proceed.

Ms Elaine Woodward: Thank you for the opportunity to make this presentation. I'm presenting as an independent regulated health care professional, an occupational therapist in private practice. The opinions presented in this brief are from my experience working with the industry over the past four years, a little bit before that but mostly in the last four years.

My involvement has been assessment and treatment of individuals involved in motor vehicle accidents, as referred by insurance adjusters directly sometimes, or by case managers of rehabilitation companies providing rehabilitation coordination on behalf of the insurer.

As an occupational therapist, I always evaluate and treat the insured clients in their environment of most significance. This environment may be the home, the school or the workplace, and sometimes it's both.

The referral is usually to assess function as it relates to the essential tasks the person did before the accident in the areas of self-care, productivity, which includes school, homemaking tasks or employment, and in leisure pursuits.

The question I'm usually asked is: "Can the person do the essential tasks? If not, why not? What will help them return to their pre-accident status?" The recommendations may be equipment, home modifications, vehicle modifications, education of the client in principles of safe body mechanics, energy conservation, work simplification, planning, pacing etc. The education may be for the family, the workplace or the school personnel.

On the job site, assessment may be documenting the physical demands of the job or evaluating the ergonomic fit between the job and the worker and making recom-

mendations of equipment and/or education to facilitate a safe return to work.

In my practice, insured clients are encouraged to take responsibility for their health, wellness and rehabilitation by being an active participant in the rehabilitation process to which they're entitled through this legislation.

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I fully support the government's commitment to reform this present automobile insurance legislation and I think this draft legislation provides a reasonable working document for discussion. There are, however, some areas of concern which I think, if they are addressed, could make this legislation better.

The purpose of this legislation, as I understand it, is to assist motor vehicle accident victims who pay premiums to the automobile insurance industry recover from their injuries and return to their pre-accident status as closely as possible, in as little time as possible and at an affordable cost.

Many things impact this process for better or for worse. The system begins with individuals who have been traumatized and may have suffered losses in health, in life role, in property and/or in wages. They often feel that they've been wronged by a party who is to blame but walks away uninjured. Thus, an adversarial situation often develops early in the claim which, if not reversed, has a detrimental effect on the rehabilitation of the insured client. To effect positive results, relationships which build trust, motivation and self-responsibility must be established by early intervention with the appropriate services. The expectations and limitations must be clearly defined in this insurance legislation to minimize the need for mediation or the tort process.

It is the responsibility of the insurer, the health care and rehabilitation providers, at times the legal community and most certainly the insured client to work together in a spirit of cooperation to attain the rehabilitation goal in a timely and cost-effective fashion. Finalization of a bill which is clear in definition and expected process will facilitate the early resolution of claims and contain the cost of automobile insurance for us all.

Point 1 is the definition of "health practitioner": Early intervention of rehabilitation services with clear treatment plans by all health care providers is key to a timely rehabilitation process. As a regulated health professional, occupational therapists assess the potential to restore functional ability and assume the demands of former lifestyles in the areas of self-care, productivity and leisure. I assert that occupational therapists should be added to the definition list of "health practitioner" in the reform legislation.

While some insurers are referring early to OT, we are still getting referrals after months or years of benefits and dependence on services which could have been resolved much earlier with timely occupational therapy intervention. I want to give you some examples of that. I think it's helpful if you can hear how these things really work.

On the issue of early intervention, I'd like to present a client who was about a 25-year-old married woman with small children. My referral came one month post-injury. This had been a traumatic event. Her husband had also been injured at work. This family was in a turmoil,

and I think very wisely the insurance adjuster actually obtained case management in this case, because she suspected that there might be some problem with this woman. She had an injury of the shoulders. She was started very early on a physio program, a program that was very active and asked for a lot of self-responsibility of the client, and she rose to that.

I was asked to see her at home, and over two visits only we discussed a number of issues and she admitted that she had previously been excessive in her cleaning and when she tried to continue with this it caused her great problems and she said she wasn't able to do anything. We tried a few pieces of ergonomic equipment and we talked about self-responsibility and about getting back to doing the things she did before, and in two visits with this woman, who was quite enthusiastic and responded very well to treatment, she was able to do all her own housework and return to work very shortly thereafter on her own accord. She said, "I'm better and I'm going." So that was a very good example.

One that was not so good was a date of injury in June 1994 and she was finally given a referral in October 1995. By now, we had a woman with two small children, unable to do to her housework to the standards she wanted and without a lot of pain, was angry, was very depressed, felt she'd lost control of everything, had a husband who was extremely angry that he had lost a number of things his wife used to do and was calling the insurance company and giving them a really bad time because nobody paid any attention to her. She, I think, felt very abandoned by the insurance company. A person came once to see her at home and said, "Oh, you're doing your own housework, everything's fine, goodbye," and never came back. She had no idea that someone could come and help her understand what was going on and show her that there was an easier way to do it.

By this time, she had a lot of problems emotionally, and so there was much more that was needed with her. As well as an active treatment program for physio—it wasn't physio actually; this was a fitness-based activity for her, and she'd been on long-term chiropractics, which was winding down. She now went into a program that was health-focused, that was fitness-focused, and not treatment-focused. She also needed a lot of teaching around body mechanics and a lot of assurance that she could do this with some very minor, minor equipment that cost maybe \$25, for housework. Also, this woman had spent a long time in directing her career towards computer work. She now had some injuries that were giving her a terrible time, and no one had ever stopped to say: "This is how you need to be sitting. This is how your computer should be set up. If you had a chair that cost you \$300, you then would be able to do this work." So the outcome was happy, but it was about a year too late.

The last one I'll just share with you is a very enthusiastic woman who takes good responsibility for her own health and her fitness as well but has had a lingering problem with a shoulder pain which she did not understand. She's had a couple of trials of physiotherapy that were supposed to then change over into a fitness-related

facility, which she was supposed to do on her own and didn't know how to do it, but nobody ever saw her at home to realize that that was one of the problems, and to also realize that if she changed a number of things in her home, she would be able to do this herself. And she had, in a way, taken some of her benefits back on her own. However, she was surprised that there was a service that could help her with that, and it took almost three years for somebody to make that referral.

I believe that if occupational therapy were defined as a medical practitioner, we would be called in much earlier to identify the implications of a diagnosis on function and to provide intervention to effect restoration or adaptation. The result would be cost containment along with early engagement, but I think more important than that is this early engagement of a client in returning to a pre-accident function.

Under accountability: Treatment plans for all regulated health care professionals and other service providers should be required as a way to enhance accountability and predict treatment costs. This is standard practice for occupational therapy intervention, whether you work with the insurance industry or whether you work in a hospital. It's just something we always do. Following assessment, a report is generated which outlines the presenting problems, the recommendation for remediation, and it also predicts the duration of intervention expected.

Delay in the approval of treatment sessions recommended on assessment, however, results in loss of momentum and motivation for the client, and also to some extent to the caregiver. You get all excited when you assess someone and you're ready to start on this and then you wait three weeks and have heard nothing from the insurer. So I think there are some problems with delay and with communication there.

But it is suggested that the treatment plan not be tied to funding approval, provided it is goal-related and with clear objectives. I repeat what was said by the team talking about acquired brain injury: that perhaps there could be a system of having some funds agreed up front that can go ahead and be used so that this delay does not occur. I think this is one of the major problems, one of our major blocking points, in getting people started early and resolved early, this business of waiting for approval.

In catastrophic injury: In reference to the proposed definition of the catastrophic injuries, I strongly suggest that this area requires significant clarification. The presentation that you had this morning really starts that clarification, and I don't pretend to be able to top what they said. They are the people who really work with acquired brain injury. I have in the past, and I see that there is a myriad of problems. The things that they have reported this morning are certainly the things I've seen: the business of this long delay and of the adversarial situation that is often set up between the insurer and the person, who is already struggling with their lifestyle and the effects of acquired brain injury, and now they also have to struggle with an insurance company that doesn't want to pay for things. They feel responsible that their health care providers aren't even getting paid. There are major problems in this area, I think.

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I also think that consultation with the specialized ABI treatment units, particularly those that work in the community setting, is certainly suggested to determine a fair definition of what a catastrophic injury is as it relates to brain injury. It's certainly imperative that this definition be clear if it's to determine the ceiling of benefits available for rehabilitation. Ambiguity encourages this adversarial situation which slows the rehab process and has a detrimental effect on the insured client and their family.

Reduction in benefits: The delay of weekly benefits for non-wage-earners to 26 weeks post-injury is certainly supported. This has removed a possible disincentive to recovery. It is further suggested that where homemaking or child care services are paid in the case that an insurer is deemed unable to perform these roles, consideration be given to making payments only to parties that are not related to the insured.

I've certainly had experience with this, where the payment of family members in some cases sets up a disincentive to resumption of pre-accident duties, and that may not be particularly on the part of the client. However, when a family member has been making a nice little bit of money from doing your housekeeping or from looking after your children for a long time, I have known clients to get in the middle of that kind of an argument with a sibling, actually, who was very annoyed with her that in fact she was taking on some of these things and she was losing her income. She had a lot of stress around that, and we spent a lot of time about being assertive and saying what needs to happen here. So I suggest that as perhaps a way to avoid that.

While \$75,000 for non-catastrophic injury is seen as adequate for most cases, please consider that in northern Ontario, where health care services are spread over a wide catchment area, the costs of sending professionals to rural areas or bringing the insured clients to the services may drive the costs higher than that cap for some individuals who, while perhaps not meeting the catastrophic definition, certainly have complex impairments and needs. The area of northern Ontario from Sault Ste Marie to the Manitoba border—and that's what we kind of consider northern Ontario from up here—is certainly vast, and we're often underserved in treatment services.

Interjection.

Ms Woodward: Mary Ann Mountain's talking about the costs of travelling to outlying areas. I certainly would echo that, absolutely. You add another \$600, \$700 on to the assessment costs when you have to travel to Terrace Bay or Marathon or whatever to do an assessment.

Tort provision: It's been my experience that when litigation is in process at the same time as rehabilitation, there is a detrimental effect on the rehabilitation process and in turn on the insured client. The use of early mediation to settle claims before commencing tort action is strongly supported.

Where tort action is initiated by the insured, early disclosure to the insurer and effective communication for all treating members would minimize the disruption and delay in the rehabilitation process.

I pose this question to you: Would a waiting period before tort action could begin be a reasonable measure to

allow the maximum benefit for the rehabilitation process? I think this can only happen if there is some agreement that there can be money set up up front, especially for catastrophic injuries that you need that money right off the bat and you should not have to be involved in a tort system to get the insurance company to do what it ought to be doing for you.

I want to just give you one example about that, and I'm almost finished, ready to close. However, I saw a client just recently who has been approximately three years now post-motor-vehicle accident, a head injury of a young woman in her middle 30s who has had significant functional problems since this accident. She said—and I almost quote what she said. It was before I actually decided to do this presentation, and her quote was, I think, just so appropriate for you to hear.

She said: "I wish I had never decided to sue. We did it early after the head injury, before I really knew what I was doing. I think it's affected the way doctors view me, it's affected the way my neighbours view me, and even my family members, as someone trying to get a fortune. It's in a small community and some friends of the other person involved won't even speak to me. Everything now hinges on money. I wish it was now just about helping me to deal with my disability."

I understand that people do need access to the tort system, but I think in lots of cases it really has a bad effect. I certainly echo what Markus Walser said about the fact that you can usually tell when a client has been to see the lawyer. There is a marked difference, and the rehabilitation goes one step backwards.

Thank you for your attention to these comments on the proposed auto insurance legislation and for the opportunity to provide input to this reform process. It's hoped that as a result of this public consultation process a document can be finalized which is fair and equitable and which, above all, provides a solid framework for the successful rehabilitation of the injured insured client. I look forward to providing occupational therapy services under this new legislation. Thank you.

Mr Kormos: Thank you, Ms Woodward. In my experience with both motor vehicle victims and workplace injury victims, with workers' compensation clientele, there's an incredible sense of frustration, rage, injustice—I could go on and on with the adjectives—by people who are injured but who then perceive themselves as being victims twice, first a victim of the event that caused the injury and then a victim of a system that doesn't recognize or appreciate or understand or empathize with that injury. Can you simply respond to that and perhaps expand in terms of your experience?

Ms Woodward: I think that's very accurate. It's my experience that that happens very often, and I think one of the contributing factors to that is this business that they do not get early intervention. They feel abandoned by the system. Certainly we've learned that in workplace injuries, one of the first places you start is when the injury happens and they need attention, they need it right now and they need it from the workplace. With this and the insurance industry, they need attention and they need it right at the very beginning. But the responsibility needs to be there on their part, that they have a very active role

in this, and in fact they are ultimately responsible for their own health and the direction.

Mr Sampson: Thank you, Ms Woodward, for your presentation. I want to talk to the item of extra costs, especially as they relate to perhaps the extra costs that residents of northern Ontario, as you call it, might have to absorb or face as part of the treatment process. Currently those extra costs, the costs of transportation, the costs of the independent evaluations, are actually included in the cap available, the \$1-million cap. We felt it wasn't appropriate to have the medical rehabilitation limits deal with costs and that's why we attempted to extract from those limits items such as what you're talking about: transportation, independent examinations, assessment certificates etc. So in fact in this proposal those cost items are excluded, not included in the cap, and don't have a cap themselves, with the exception that they of course must be reasonable and agreed to by the industry and the person absorbing the costs.

I think that's gone a long way to deal with the issue that it may cost more money to get from point A to point B in northern Ontario than it would, for instance, in my riding in Mississauga. I think that's a fair recognition of the diversity of this province and how some Ontarians face more expenses just to get the treatment than others might.

Ms Woodward: I'm glad to hear that.

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Mr Sampson: Again, though, it does have to be a reasonable expense and it does come under an insurance veto, but I think that's fair. To a large degree, we've also said that the amounts payable by the insured in these categories need to be in accordance with the fee schedule. I think it's appropriate for us to understand that it's not right for an independent examination in Mississauga to cost \$1,000 but to cost \$6,000, for instance, somewhere else, or vice versa. That doesn't seem to be fair, so we felt there was some need to establish a fee schedule.

Ms Woodward: I agree with that, I do, but I think that it needs to be consulted with the professional associations or their colleges, whoever is that appropriate body, to do that.

Mr Sampson: Yes, no question. I think the colleges need to be involved in the process. So do the insureds, as I said to an earlier deputant, so that those two parties, inclusive of the claimant, have some ownership in where the money is being spent and how it's being spent and to ensure that everyone's eye is on the same ball, which is, try to maximize within the available dollar resources the recovery of the claimant.

Mr McLeod: I have to say I'm not sure that northern Ontario is reassured by Mr Sampson's response. I wonder whether or not those increased costs will still be reflected in increased premium rates for northerners as the premiums begin to go up.

I appreciate your brief and its emphasis on rehabilitation and getting accident victims back into their regular workplace or their way of life as quickly as possible. If I've understood the other presentations made on this issue, though, the idea of a waiting period before tort action could be taken might actually aggravate the problem because of the sense that you've got to focus on

maximizing your sense of pain and suffering in order to hold the case long enough to get into court and make your case, and that in the past has been a deterrent to rehabilitation.

Ms Woodward: Perhaps for the case of pain and suffering, but what's being proposed here is that we go back into full tort system for everything. I would see perhaps for that category it might be, but it still has a detrimental effect. I don't care what category it is in. That needs to be recognized.

I think too, though, that there are many people who work together to make this process work and I think that at this time we don't really work together to make it work, and that would be a help, if all of the parties were able to meet periodically or whatever to talk about common goals and how we can do that, and how we can do it cooperatively. Surely the whole thing is to help people who pay premiums get better fast and get back to their own lives.

They don't want to be disabled; they truly don't. Yet, it seems to me that it's so scattered and that it's a very adversarial system. If we could stop that and if we could get a policy that would stay in effect for quite a long time, something that we all feel is fairly reasonable and we could work on that, I think there's some room to do this.

Mrs McLeod: Are you concerned that with the proposals in front of us exactly the opposite may happen, that the combination of, as you've described it, a huge re-opening of the tort system, including pain and suffering, combined with a significant reduction in benefits, may force the clients you work with into court whether they want to be there or not?

Ms Woodward: Absolutely, I do.

The Chair: Thank you, Ms Woodward, and the Lakehead Occupational Therapy Services for your presentation today. We appreciate it, and I'm sure it will be valuable to us in our deliberations.

ELEANOR GARDINER

The Chair: We now welcome Eleanor Gardiner. Welcome to the standing committee on finance and economic affairs. We appreciate your attendance this morning. I understand you have a brief which has been or is being distributed. If you would like to present that brief, we can use any remaining time for questions.

Ms Eleanor Gardiner: Thank you. I appreciate this opportunity to come before you. Before I introduce myself, I wish Mr Kormos were here because I would like to use inclusive language. I am a working lady, not just working men.

The Chair: I'm sure he'll be back.

Ms Gardiner: I'm an occupational therapist and I also practice as a rehabilitation consultant with other occupational therapists and consultants. We are involved in case management, and that's the coordination of treatment and vocational programs not only in Thunder Bay but in the northwestern Ontario region which, as the previous speaker mentioned, goes from Sault Ste Marie to the Manitoba border.

I wish, on our behalf, to address considerations and definitions and some clarifications that may be required

to best serve the needs of the insured with the new auto insurance legislation. I am not going to read entirely from my presentation to you but rather to summarize some things.

Our provincial body, the Ontario Society of Occupational Therapists, hereafter known as OSOT, has submitted a position statement on February 19 outlining well the principles and philosophies in the legislation which are important to occupational therapists and which we certainly support. However, we share and would add some concerns as case managers and also as residents of northwestern Ontario to continue to provide rehabilitation in a timely and cost-effective manner.

First, the definition of health practitioner. The omission of the occupational therapist from your list of designated health practitioners is significant in the overall delivery of rehabilitation if "the impairment is one that an occupational therapist is authorized by law to treat."

By definition under the Regulated Health Professions Act, the scope of practice of an occupational therapist "is the assessment of function and adaptive behaviour and the treatment and prevention of disorders which affect function or adaptive behaviour to develop, maintain, rehabilitate or augment function...in the area of self-care, productivity and leisure." This profession, which is focused on the assessment and restoration of function, is conspicuously absent from the listing of professionals who are authorized to certify that a functional disability or impairment of function exists.

Occupational therapists are currently being contracted by the insurance industry throughout the rehabilitation process. You have heard this from my colleague Elaine Woodward. Often, with fewer and shorter hospital admissions, we are called upon very quickly to evaluate clients so they may manage in their home during a convalescent period. I have had an adjuster call me when a lady in her 70s was discharged from emergency, about three hours after the impact of a truck upon her, and went home with a cast on an upper extremity and on a foot. Needless to say, she had a few barriers to personal care and coping. Client B was sent directly from a hospital, with no support services, in a body brace. Imagine the shock and trauma of facing your home and not knowing how you're going to get to the bathroom or how you can get out of bed or perhaps how you can manage to move a cup of coffee from one side of the room to the other.

First, we focus on practical solutions that give opportunity for clients to again feel a sense of independence, self-responsibility and that they are safe in that home environment. As individuals improve, we may return to see them through to a return to home responsibilities. This is the care of their home. In the case of one of my clients, she was responsible for cooking meals for her grandchildren. Likewise, we may work with a client and employer to effect a satisfactory return to work. Hence, as our professional philosophy and practice is focused on goals of independence, that is return of function for home, work and leisure, our inclusion, concurrent with other cited health professionals, should expedite that client's rehabilitation.

Second, treatment plans. The submission of treatment plans is welcomed as an intent to ensure accountability.

However, as OSOT has asserted, this accountability should extend to all regulated health professionals and other service providers. I think that Ms Woodward has alluded to a situation where there can be abuse of the system and use of moneys with other service providers if there's not a rationale.

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In rehabilitation case management we provide an individualized rehab plan and services which are based on the treatment plans provided by rehab team members, and these assist with providing direction to the client's rehabilitation and therefore increase a proactive and effective approach to management of the file and coordination of timely progress reports. I think there is a variety of standards at the moment, and Mr Sampson's comment about accreditation may address some of that. As far as having timely progress reports, I think we are all accountable for where that client is in the system.

Rehabilitation's ultimate goal, and to feel that rehabilitation is complete and the insurer's focus, is a return to work or at least to pre-accident activity. With case management, liaison with the employer is established early. OT as well may play an integral part, and this will be reflected in their treatment plan. These links to pre-accident status and the real world avoid delays and the client perhaps developing a sense of being a patient, versus person status. I like working with physiotherapy clinics that graduate clients into community fitness programs; you stop seeing yourself as a patient who is essentially sometimes a victim, and this makes a difference.

In the north, in Thunder Bay and other small towns where independent adjusters provide service to large parent companies based a distance away—I might mention that several insurance companies have closed their offices here and we must work through their head offices in Ottawa, Montreal, Kitchener or Toronto—it is unclear in the draft legislation if these adjusters will be able to approve quickly a timely and reasonable treatment plan or service, or will this yet be another delay in the initiating of appropriate intervention for a client?

Third, designated assessment centres, their role in treatment approval. We agree with OSOT's position that in a DAC's review of a treatment plan, should there be a dispute, it must be a peer review so the expertise of that specific profession be brought to the evaluation. However, if treatment plans from each team member include time lines and rationale for the treatment, the adjuster should not find it difficult to evaluate as to its inherent value for the dollar, and therefore give approval. However, it is not clear how and/or the specific basis on which the DAC will be used at this fairly early stage to review treatment plans, and what will the turnaround time be for that review and approval process? During this delay, what is the program status of the client?

Fourth, reduction in benefits. I'm going to echo some of the comments of previous speakers. Certainly the expectation of the insured and the ever-increasing benefits available prior to this new legislation could often negate motivation and resolution in rehabilitation. For people who were in rather awkward job situations, sometimes there is not the incentive to return, or do they welcome that opportunity to resume normal activities if there have

been burdens and responsibilities that they were not enjoying at that time? The removal of non-earner benefits we also see as helpful in motivating people to a return to normal activities.

While the cap of \$75,000 for non-catastrophic injuries is sufficient in most cases, we would put before you for consideration and/or clarification—Mr Sampson, I did listen very hard to your comments about the north but I do worry too that that may come back in our premiums—that between the regular guys and catastrophic injuries there are what I would like to call complex injuries. They require an ongoing multiplicity of services for resolution, for example the soft-tissue injury or minor fracture where concurrent factors lead to post-traumatic stress, depression or chronic pain. I can cite situations where the individual was there and seeing perhaps another person involved in the accident who was critically injured, and their own injuries are not by any means catastrophic, but it certainly leaves a great many other things hanging in the balance. I've just recently gone through a lot of time and effort, and so has the insurer, with a client for whom anger and depression are such large, large components that with four different individual, independent assessments, three of the specialists said there is a requirement for psychiatric intervention because it is impeding physical recovery. And there will be times where the \$75,000 may not be rigidly applied and we hope that will be considered.

With a lack of required specialized services readily at hand for assessment or treatment sometimes in our northern geographic catchment area, we may be faced with longer accident benefit coverage as clients wait for these services. I've had a client who waited eight or nine months just on a consultation, and that's not faulting even the system, it's just a fact of life that if you only have one neurosurgeon you only have one neurosurgeon. In the meantime, if they're referred to another centre, we've got those added costs of transportation.

Time delays do cost in ongoing benefits, but they also cost in impetus towards resolution in rehabilitation. I think the previous speakers have mentioned the fact of accommodation, meals and so on. Also, very many times you are faced with having a travelling companion if that client is at risk in any way, whether it's cognitive impairment or is a juvenile.

In smaller northern communities, there's a need to acquire and then coordinate the multiple services associated with a given injury. As noted by the OSOT position statement, it's unclear whether the costs for case management service will be limited in duration or dollar caps or whether they are in fact a part of the \$75,000.

For many in the north, hard work and independence in a sometimes unforgiving environment is a way of life. However, many of these individuals impaired by a motor vehicle accident may have limited aftercare. They're flown out of their community. Early intervention with a focused, goal-oriented treatment program is a mysterious maze in our health system when they're in a strange environment. For the first time, this very independent individual feels helpless and the loss of function may mean a very real loss of livelihood in our resource-based communities. Finding and arranging appropriate treatment

expediently, return to that home community and to work is the role of the case manager, and we may act as a consistent reference point during this time.

We would ask that clarification be provided regarding the statement in the summary chart on page 7: "Case management—insurer required to pay for case management related to the coordination of medical, rehabilitation or attendant care services."

I pose some questions below this: How will the need for case management be decided and when? Who will request and/or make this decision? What will the funding framework limitations be for this provision? Will there be a time limitation for case management? How will this be decided and by whom?

I've talked again about the stabilization of premiums, and we won't go into that again.

The definition of "catastrophic injuries," which is the fifth point, we have concern with it being based entirely on medical condition. The client must be evaluated in the context of the effect of the injury on function in home and vocational setting. I think one of my colleagues made mention of the fact that the loss of a small digit may be nothing to someone who's just having a close grip on a chainsaw at a later stage, but if you're a violinist, it is indeed catastrophic. So we may have to look at it in context.

I'll turn now to head injuries and our concern there, again relating to the Glasgow coma scale score 9 as being the predictor of functional impairment. This is neither practical nor accurate. Our experience has provided us with a number of examples and Dr Mountain alluded to those in the Fort Francis area, where you would be defied to decide who had the coma scale that would put them into the catastrophic area.

Education, return to work, behaviour and many secondary psychological issues have significantly affected lives. Someone may look fine but be disoriented. The impact upon physical, emotional, psychological, academic, social, avocational and vocational aspects of a person's life requires examination and input from a very wide team of professionals whose scope of practice is represented by each of the above problems.

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Another area where we've conferred with the department of Labour and WCB as well as the insurer—and I think it is something to take stock of—is return-to-work programs for these head-injured clients. Employers are naturally reticent and there's a need to clarify policies regarding the responsibilities of the insurer and those of the employer in this situational work placement. We've had unfortunate delays because of this.

Consideration of the involvement of family members: I think for any of you who have children, the very thought of having one of them impeded in their development by a head injury, you can imagine the effect it has on parents and how they handle that situation, or a spouse who has been the main breadwinner. So the effect on caregivers and support systems needs also to be addressed with respect to ever-increased services required.

Dr Mountain talked about the cost of flying out, and at the moment, we have very specialized tutoring services being flown to that area, we have physiotherapy, in relation to those cases. It's a pretty high ticket.

If a head-injured client is a juvenile or student and if they do not fit the current limited definition of "catastrophic," there are many family and education problems that may plague them for years, and these cannot be handled by our shrinking public system.

These are just some of our concerns about the acquired brain injured:

Litigation: As the legislation reintroduces the tort system, we as treatment professionals and case management consultants attempting to bring a client to his or her ultimate goal in rehabilitation find ourselves caught in this adversarial situation. The relationship with the client may become nebulous for whom we've had support and rapport and all of a sudden, there's a: "Look at you. Oh, you're trying to get me back to work," and the lawyer is saying: "Wait. Don't get better too fast because we've got to get our case in order." There's so much that the client is capable of doing and it makes them feel better about themselves, and we don't want to see a system that removes that sense of "I'm getting better."

Will the legislation be reviewed to be more specific and provide guidelines for a system of communication between the insurance and legal communities?

At a time when publicly funded services are being reduced and cost control is essential in the insurance industry, clients need to know that if they require legal counsel or direction, they are not entering an either/or but perhaps a both/and arena, an arena where there is some map indicating the avenues of communication between the parties involved, and the client may continue to focus on a return to their normal living lifestyle.

Any relationships which diminish trust, motivation and self-responsible actions on the part of the client are detrimental to rehabilitation. When there is litigation in progress, simultaneous with administration of accident benefits, there is a recognizable impact on rehabilitation.

I suggest perhaps the use of a case conference process, which is I think what Ms Woodward was relating to, where all parties are together, and education of the clients. I don't think we think, as we keep changing legislative acts concerning insurance—I don't think we realize that the average person on the street gets no education about their roles, their responsibilities and their rights. They should be educated by both the insurer and the lawyer, and then they may act in a way that is in their best interests, but also so we don't end up in such an adversarial position. With stated guidelines, that may be helpful to all team players including myself who feels I'm suddenly caught between that legal and insurance community. I appreciate your patience at the end of a very, very long morning and thank you again for this opportunity.

The Chair: Thank you, Ms Gardiner. We do have time for a very brief question period. Perhaps we could ask for one minute in that area.

Mr Spina: I just wanted to draw your attention to a point. You had asked a question about whether the case management expenses were included in the \$75,000 or not. They're supposed to be excluded according to the current draft.

Ms Gardiner: Okay. I did read through the draft and I did not manage to see that as being specific, so perhaps—I think there's room for just rewording.

Mr Spina: Sure. On page 4, you said it's not clear how or on what basis the DAC would be used to review treatment plans and I guess my only question was if, with the time commitment, what would be your ideal scenario? Should the DAC come in right at the very beginning before a treatment plan, or when a treatment plan is created, or should there be a time frame based on either a treatment level or a time frame like five weeks or something like that?

Ms Gardiner: I think what I'm really saying is that perhaps the DAC won't be needed at that point. I think the DAC's role is going to be more important and is going to come up more often, not in that first bit of treatment, because usually if there's rationale, the adjuster is happy with that. But if the adjuster had expected that six weeks of treatment might be adequate, I think it is incumbent on the treatment provider, as Markus has said, to make sure their rationale and their time lines are very explicit so that the adjuster won't have to turn it over to the DAC, because I can foresee four to six weeks while they're getting a turnaround on that. My concern is what happens in that time.

The Chair: Thank you very much. Can we move to the opposition? Miss Castrilli.

Ms Castrilli: Thank you very much, Miss Gardiner. It's good to have a case manager. We haven't had many of them before us to explain to us what their work entails. I really have a longer question which I may ask you to comment on perhaps later, separately, but let me just ask a brief one. You indicated, and the draft legislation in fact says, that insurance companies will be responsible for paying case management fees. As I read the legislation, though, that is a benefit that must be applied for by the insured and that the insurer either then pays or informs the reasons why that cost won't be covered. Were you aware of that?

Ms Gardiner: Yes.

Ms Castrilli: It's not automatic. I mean, there is a—

Ms Gardiner: I'm quite aware that it is not automatic and I am also saying, at this point, that is why I would like to see some more specific wording. I would also like to know the criteria on which the insurer will be able to refuse or approve the case management, because a lot of cases, unfortunately, if we wait even four months, hang on for a year where they might have been cleared up in four or five months.

Ms Castrilli: I'd be interested, Mr Chair, in having Miss Gardiner's comments—the questions that she asked around case management—you've posed some questions. I'd really be interested in your thoughts on how to answer those questions. I know we can't do it now but if, perhaps, you could forward us some additional materials on that score, it would be really helpful.

Ms Gardiner: Certainly. I can—

The Chair: We would see that it was distributed to the members of the committee, that being the case.

Ms Gardiner: That's fine. I can forward it through perhaps—

The Chair: To the clerk, if you would.

Ms Gardiner: To the clerk. Okay.

Mr Kormos: Miss Gardiner, the \$75,000 cap for the non-catastrophically injured victim: there just seems to be

no rhyme nor reason. The impression one gets from you is that most of those people won't be affected by the cap because most of the rehab program for a non-catastrophic will fall below that cap.

Ms Gardiner: Yes.

Mr Kormos: But the fact remains that the cap will exclude the perhaps rare, or even not so rare, but still in the smaller numbers of persons who don't pass the catastrophically injured threshold, but who none the less have injuries serious enough to warrant maybe \$95,000 or \$100,000 or \$110,000 worth of rehab without which they're never going to be restored to as close to a position as possible as they were before the accident. There seems to be no real logic, then, for having this two-tiered system. Is there any that you can think of from the insurer's point of view?

Ms Gardiner: What our professional group has said is that, for the most part, yes, \$75,000 is going to be quite adequate. But I think that if we reach that threshold, I would hope that individual insurers and companies would recognize that they are going to have to perhaps, not necessarily in the legislation, indicate a willingness to review on an individual basis.

Mr Kormos: You see insurers as far more benign about this than I ever have. I think if the legislation that's there is going to permit them to impose that cap, by God, they're going to impose the cap because that's a dollar-and-cents industry.

Ms Gardiner: Well, then that again is something that should be reviewed.

Mr Sampson: Why is that cap there?

The Chair: Thank you very much, Miss Gardiner.

Ms Gardiner: Well, I think there has to be some cap. Thank you.

The Chair: We appreciate your input very much and it will be considered in our deliberations, I can assure you. That brings to a close our morning session. I would remind the committee that we have a 12 o'clock checkout and that has been extended, I understand, until 1 o'clock. You can leave your bags in this room, those of us who are departing this evening. This committee will stand in recess, then, until 1:30 this afternoon. Thank you very much.

The committee recessed from 1202 to 1334.

MARVIN MOHRING

The Chair: If we could call the meeting back to order, we have the pleasure now to hear from Marvin Mohring. Welcome to the committee. We have 20 minutes together. You can start with your presentation and we will finish off with questions. Please begin whenever you're ready.

Mr Marvin Mohring: Good afternoon. My name is Marvin Mohring. I'm the advocacy chairperson with the Ontario Massage Therapist Association. I'm a registered massage therapist and kinesiologist working and living in northwestern Ontario. I've had the opportunity to work with automobile accident victims with my two disciplines since 1991. I'm here on behalf of the registered massage therapists in the northwest as well as the rest of Ontario.

I would like to thank you for the opportunity to address the committee on such an important issue. I am

aware the committee has heard the presentation from the Ontario Massage Therapist Association and recognize the need to include registered massage therapists in the definition of "health practitioner." I wanted to present today to provide a perspective based on my clinical experience.

The draft legislation has good balance and I'm supportive of its content. As a registered massage therapist, I regularly treat people injured in motor vehicle accidents. Under the Massage Therapy Act, 1991, my records must include a copy of a treatment plan. It has been my experience that in creating a treatment plan with the injured individual, the outcomes or goals are known and are realistic to each of the involved parties. This includes the injured individual, the therapist and the third-party payer. This information clearly communicates the direction of the treatment, including the expected time frame. However, my professional opinion is included in this process. To have someone else make a treatment plan would create delays in treatment as well as possible confusion in the administration of the treatment.

Based on my clinical experience, treatment plans serve as a measuring stick, demonstrating the effectiveness or ineffectiveness of my treatment. When the goals have been reached, I conclude treatment. If the goals are not being achieved, I will refer the individual to a suitable health care professional. Cost-effective rehabilitation may involve an individual or a team of therapists from different disciplines in different locations.

I've included a letter from Dr John L. Remus. Dr Remus is an orthopaedic, traumatic and reconstructive surgeon extensively involved throughout northwestern Ontario. He has seen the benefits of massage therapy. In his letter he outlines how early treatment, including massage therapy, benefits the injured individual, allowing early recovery and return to work. Obviously, the more rapid recoveries equate to lower rehabilitative costs.

Injured individuals must have access to the appropriate health care professionals in a timely fashion. Injured individuals must have access to registered massage therapists who are experts in providing assessment and treatment of the soft tissues and joints of the body. I urge the committee to include registered massage therapists in the definition of "health practitioner" in the auto insurance legislation.

I thank you for the opportunity to present my perspective as a registered massage therapist. If you have any questions, I'd be happy to answer them at this time.

The Chair: Thank you very much, Marvin. We have lots of time for questions. If we could start with the opposition, it will be a five-minute round of questions.

Mr Phillips: I'll begin and Mr Crozier, I'm sure, will have a question.

Just in terms of the growth and the need for your profession's services, I see you've been involved since 1991, I gather, with automotive accident victims. Have you found your profession's demands going up in the last three to four years?

Mr Mohring: I've been practicing massage therapy now for two years. In 1991, my experience with the auto insurance industry came through working as a kinesiologist. I've seen in that time massage therapy grow, as well

as access to other forms of rehabilitation, because of increasing education, that role coming through the rehab counsellors as well as other health care practitioners gaining a better knowledge of what is out there and what the patient needs.

Mr Phillips: Just in terms of the growth and the demand, do you have any idea in this area of what has been happening over the last three or four years in terms of the needs for your types of services?

Mr Mohring: Massage therapy specifically?

Mr Phillips: Yes.

Mr Mohring: In terms of costs?

Mr Phillips: Well, demand and then I guess costs.

Mr Mohring: I believe the demand is growing.

Mr Phillips: You indicated in your presentation that you had a chance to review the legislation and are supportive of the content. A new element in the plan is to increase the access to the court system for victims. Have you any opinion on that aspect of it, one way or the other, and any advice for the committee on whether that's an aspect of the legislation that's, in your mind, useful or of concern?

Mr Mohring: I'm not very familiar with that aspect of it.

Mr Phillips: We've had some other presenters today expressing at least a reservation about the possibility of a conflict that they find themselves in where they are attempting to assist the individual very quickly to get back to as close to normal as possible, but at the same time when that individual may be attempting to get some redress through the courts, they felt almost a bit of a conflict, that the faster they were able to assist them, there was a concern that the less opportunity they had for access for settlements in the courts. In your experience, do you have any opinion on that one way or the other?

1340

Mr Mohring: My opinion in that area is, if quick access to rehabilitation is impaired because of tie-ups in the courts, I believe the person physically will not benefit as quickly as they should. Just because things are tied up in the courts doesn't mean they can't have rehabilitation services.

Mr Phillips: Just for my information, how would people get in touch with you? Where would most of your clients be referred to you from? Who would be referring them to you?

Mr Mohring: As a health care practitioner, I am available. I'm in the Yellow Pages. I've done letters of introduction to a variety of health care practitioners, just letting them know that I'm there, whether or not people choose to refer to me. People can call me off the street.

Mr Phillips: But for accident victims, would it be normal that the victim would phone you, or would it be someone who is acting on their behalf phoning you?

Mr Mohring: Whether they have, through their primary practitioner, their family physician, or whether it be the individual initially assessing them, in whatever capacity it might be, whether it be the claims adjuster or the rehab counsellor, they may refer or suggest.

Mr Phillips: What percentage would just sort of find you out as opposed to being referred to you?

Mr Mohring: Pardon me?

Mr Phillips: What per cent of the people, your clients, accident victims, would sort of find you out versus having been referred to you?

Mr Mohring: That's tough to say for myself; probably 20%.

Mr Phillips: That would sort of phone you and say, "I see you do this sort of thing." Fine.

Mr Mohring: Excuse me, are you talking about auto insurance?

Mr Phillips: Yes.

Mr Mohring: Okay, yes, all right.

Mr Kormos: As you know, you're not alone in terms of coming to these hearings and representing your particular profession—and I'm not being in any way disparaging—basically saying "me too." Occupational therapists were represented here this morning in two presentations, and they were essentially saying "me too." The Ontario Chiropractic Association, the local area association, is going to be on after you. I want to put this in context. You're aware of—and I trust it's eroding now—the long-time almost feud, vendetta between the traditional medical profession—physicians—and chiropractic. Far be it from me to pass judgement, but it seems that physicians were very jealous of their bailiwick and there was a lot of resistance to chiropractic, but again, it also seems that's eroding.

So the question is, how should an accident victim be dealt with in terms of who should make the decision that a massage therapist should be a part of the treatment protocol; who should make the decision that an occupational therapist should be part of the treatment protocol; a chiropractor? Obviously, I'm getting down to the issue of case management, of rehab management. What are your views on that? Do you see yourself as part of a team? Do you see yourself as a diagnostic person in the first instance, you and other massage therapists? Put that in context, please.

Mr Mohring: I think you'd have to look at that as an individual case. If someone comes injured in an auto accident, head injury, you're dealing with a whole different rehabilitation compared to just a soft-tissue injury. So each of the 23 regulated health professions, we each have some overlap with others. Some may be more suited to an individual case than others. So individual examination is where's it essential, and whether it be referral to—I'm not answering your question.

Mr Kormos: Yes, you are.

Mr Mohring:—referral to a physiotherapist, referral to an occupational therapist, the degree of overlap between them, one deals mainly with physical rehabilitation, another facilitates lifestyle.

Mr Kormos: Okay, but who should be making the decisions about whether or not an injured person sees a massage therapist? Should the insurance company be making that decision? Should the victim himself or herself? Should a doctor be supervising the whole realm of treatment? Should a case manager, like a rehab management operation, be doing it?

Mr Mohring: I don't believe one person should be responsible for that. Who in particular, I'm not sure.

Mr Kormos: How would you see it developing? How do you see yourself interacting? Because we're assuming, and also from what you've said about the different roles that physiotherapists, OTs, what have you, have to play, that we're talking about a team approach, right? There's a whole lot of concern that if the insurance industry monitors that, their goal—I appreciate not for all because not all insurance companies are equal, not by a long shot and I trust that's your experience as well—for a whole lot of them their goal is to pay out as little money as possible, right? They're liable to dismiss massage therapy and OT and physiotherapy as irrelevant, redundant, superfluous. Can we trust insurance companies to make those decisions then, in view of the fact that their interest is to pay out as little money as possible?

Mr Mohring: I would say no.

Mr Kormos: In your view then, what would your ideal be? If you were working as part of a team, where would you feel most comfortable working? If your sole goal is to see an injured victim recover as quickly as possible and as much as possible, where does the leadership in that team come from? Then again, I don't know the answer, all right?

Mr Mohring: I don't think one individual can be responsible for that.

Mr Kormos: How do you develop that then if it's more than one individual?

Mr Mohring: The best scenario is to have that team, to have a team responsible for that.

The Chair: Thank you very much, Mr Kormos.

Mr Kormos: Are you sure that was all of my time, Chair?

The Chair: Actually, you got an extra minute. You got six minutes.

Mr Tim Hudak (Niagara South): He owes one.

The Chair: I'll get that one back.

Mr Kormos: I'm sure you will.

The Chair: If we can go over to the government side.

Mr Sampson: Thank you for your presentation. I'm going to pick up on the theme of the questioning from Mr Phillips and Mr Kormos. I think it will be very helpful for this committee if we kind of follow the sequence of events, if I can, that an injured accident victim might go through to use your services. When would you normally see an accident victim come to you in regard to how long after an accident, on average?

Mr Mohring: My experience has been that I'm typically the tail end of treatment.

Mr Sampson: Is that eight weeks or four weeks or 10 months?

Mr Mohring: Actually, for some cases, it's over a year; for some, it's as little as two months.

Mr Sampson: Clearly, in the former category, if it's over a year, somebody is referring them to you, are they not?

Mr Mohring: True, yes.

Mr Sampson: Would that generally be a case manager?

Mr Mohring: No. I've received referrals from many others, like the health care practitioners, other than just the rehab counsellors.

Mr Sampson: What about the situation where—did you say two months or one month, somebody would see you?

Mr Mohring: Yes.

Mr Sampson: In that particular situation, are they walking in off the street, so to speak, or are they being referred to you in that case?

Mr Mohring: No. Through ongoing education to other health care practitioners—this is my own practice I'm talking about because I haven't been around that long—I've gained the confidence of people to refer early when treatment is most effective.

Mr Sampson: But clearly, somebody's not getting involved in an accident and their second thought is, "Gee, I better go to a massage therapist to get some treatment." There is some intervening process, whether that be another practitioner or a trip to a case manager or a visitation to a lawyer's office. Somebody else is sort of in between the time of the accident and the time somebody comes to see you, are they generally not?

Mr Mohring: Usually a family physician is one of the people they'll see first.

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Mr Sampson: When somebody comes in your door, how do you deal with the establishment of a treatment plan? What are you doing and what do you advise (a) the insured and (b) the insurance company in regard to your treatments?

Mr Mohring: What I typically do is that because I work by myself, people have to contact me. If it's an insurance case, I will phone the adjuster, the rehab counsellor, first, find out a little background, obtain permission for treatment, just to make sure that I know I'll get paid. The person will come in—

Mr Sampson: Sorry, I'm just going to stop you there. You say you obtain approval from somebody in the insurance industry before you proceed. What are you telling them? What is encouraging them to say, "Yes, proceed with the massage therapy?"

Mr Mohring: I just want to make them aware because so far my experience is that the communication between the adjusters or whoever is handling the case and the massage therapist or whatever health care practitioner it is—there's no communication link.

Mr Sampson: So somebody may not have informed the insurance company that they've given you a ring, basically.

Mr Mohring: Correct.

Mr Sampson: You're just making sure the insurance company is aware of the fact that there may well be a massage therapist bill coming in the mail.

Mr Mohring: Yes.

Mr Sampson: But are you establishing a treatment? You clearly can't establish a treatment plan.

Mr Mohring: No, that's prior to the person showing up at my office. Once they come to my office, that's when I will begin my assessment and establish a treatment plan.

Mr Sampson: How much time would you require to establish a treatment plan? Can you do that after one visit, two visits, three visits? How will you know?

Mr Mohring: Usually after my first visit, I will know some of the larger areas, more general targets, and then within the first two or three treatments, I typically know.

Mr Sampson: When you establish a treatment plan, do you lay out goal posts—

Mr Mohring: Oh, yes.

Mr Sampson: —to say: "Listen, this is what I'm going to be doing over the next four weeks. This is what you can expect as an outcome after four weeks"? Do you lay that out to the insured as well as to the adjuster or the insurance company?

Mr Mohring: Yes, I do. I include that in my initial report, and like I said, I use that as a measuring stick.

Mr Sampson: What happens if the recovery falls short of that measuring stick? What do you then do and how soon would you deal with that matter?

Mr Mohring: On those subgoals, smaller goals, if I'm not reaching where I want to go—if I still see improvement and it's lasting improvement, that's a judgement I make. Maybe my time frame was too short. However, if they've plateaued and they're not recovering at all, then it's time to refer on. I have to refer out. I can't necessarily deal with that situation. Initially, it may have appeared that I could, but if I realize I can't, then that's when it's referred on.

Mr Sampson: Have you ever had any patients DACed, as they say, and gone to the designated assessment centres?

Mr Mohring: No.

The Chair: I think that concludes our time. Thank you very much, Mr Mohring, for your presentation. It's very helpful to have that kind of insight into the committee's deliberations. We appreciate your presence today.

If I can enter a small piece of business, I understand that our 9 o'clock deputant, Smith Brokers Ltd, had some difficulties this morning but will be able to present this afternoon. We need a unanimous motion of the committee to allow that to take place.

Mr Arnott: So moved.

The Chair: Any dissenting votes? Thank you very much. That can take place.

Mrs McLeod: Mr Chair, I might indicate that it would have to be a verbal presentation if that would meet with the concurrence of the committee.

The Chair: We don't mind verbal communications, I'm sure.

There is another small piece of business. I understand we also need a unanimous decision. Apparently the substitution slip for the member of the third party was late in arriving. Would there be a motion for unanimous consent to have it apply from 9 am for this morning?

Mrs Marland: Does that mean that if we don't agree, we can wipe out everything he said this morning?

The Chair: I don't think it has anything to do with input.

Mr Sampson: Mr Chairman, I'd be happy to move that.

The Chair: Is there unanimous consent for the motion? Thank you very much.

Mr Spina: We've accepted you, Peter.

Mr Kormos: I've been building a reputation. I don't want to destroy it in a matter of minutes.

THUNDER BAY AND DISTRICT CHIROPRACTIC SOCIETY

The Chair: We now welcome the Thunder Bay and District Chiropractic Society, a regional society Ontario Chiropractic Association, Dr Stuart Brimmell.

Dr Stuart Brimmell: With me here is our president, Dr Bill McCallum.

The Chair: Welcome to the standing committee on finance and economic affairs. We have 20 minutes together and I understand you have a presentation which is being distributed. We look forward to our time together. Please proceed.

Dr Bill McCallum: I am the president. I'm here to support Stuart today. He's more involved in this type of matter than myself. On behalf of the society, I'd like to thank you for the opportunity to present.

Stuart's credentials, just before you get started: He's a member of our board locally, of the society; in practice seven years now, and he's cared for many motor vehicle accidents over the past seven years on a daily basis. He's also an alternative chiropractic examiner for the local DAC, with our principal assessor being Dr Peter MacDonald locally. He's a member of the ethics and disciplinary committee for the OCA and also an independent chiropractic examiner for insurance claims for the OCA. He's quite qualified and he's going to present this afternoon, and I'll be here to support him.

Dr Brimmell: Today I essentially have two key points that I'd like to address. I'm going to read through most of it, of course, and I'll attempt to make it as interesting and entertaining as possible. However, please, I don't want anybody yelling out, "Hurry, hurry, hard." None of that stuff.

Mrs McLeod: There are no curlers in the audience.

Dr Brimmell: No curlers?

Mrs McLeod: No.

Dr Brimmell: Our society wishes to thank the standing committee for this opportunity to make a presentation. Like I said, I'm going to address two key points that the society feels are not dealt with adequately under the health care benefits section of the draft legislation. Point 1 is the importance of designated assessment centres being required by law to have peer review, and point 2 is the importance of patients having the guarantee of receiving reasonable and necessary acute care without challenge from their insurers and threat of non-payment. These things can cause distress to patients when they least need it, causing much suffering.

Under "Peer Review," locally, the Behavioural Science Centre in Thunder Bay is not only a designated assessment centre under the auto insurance legislation, but it's also the regional evaluation centre for the Workers' Compensation Board. In both capacities there have been cases where chiropractic patients have been assessed by medical specialists and told completely inappropriately, according to chiropractic management goals and principles, that they should not be receiving chiropractic treatment.

The new legislation should make it quite clear that assessments of health care services and treatment plans in designated assessment centres, or DACs as we know them, should be made by a person or a team including a

person from the same professional background as the insured's chosen health care practitioner. This is not only important for the individual patient, but also for the wider goal of fostering and establishing interprofessional understanding and cooperation.

The local society supports the submission of the Ontario Chiropractic Association that there should be a new section 60 in the statutory accident benefits schedule as follows, regarding my point 1:

"Who may make assessments for health care benefits

"60. Where an assessment is made for the purposes of determining whether all or any of the health care services given or proposed to be given by a health practitioner are reasonable and necessary and payable by the insurer, then:

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"(a) If the assessment is made by one person, that person shall be a health practitioner from the same health profession as the health practitioner whose services are being assessed; and

"(b) If the assessment is made by more than one person"—at the DAC—"one of those persons shall be a health practitioner from the same health profession as the health practitioner whose services are being assessed."

Under point 2 that I'd like to make this afternoon, under acute care, subsection 42(6) of the SABS: This is the provision of the draft legislation that provides a patient with guaranteed acute care chiropractic and physiotherapy services. As drafted presently, it allows 15 treatments or treatment for six weeks after the accident, whichever comes first. After that the insurer can challenge whether the treatment is reasonable and necessary and stop payments. This means interrupting care for some patients until the chiropractic or physiotherapy care has been reviewed by the DAC.

To illustrate why this is unfair to patients, I give this example and comment from my own practice here in Thunder Bay. Assume I am consulted by a typical grade 2 or grade 3 whiplash injury patient as classified by the Quebec task force report, considerable pain and restricted range of motion, but a soft-tissue injury without bone fracture. For example, this is four weeks after the accident, after unsuccessful care from another health care professional.

My particular management—and it's probably indicative of most chiropractors—would typically include an initial consultation and examination and perhaps cervical X-rays, if they haven't already been taken, then treatment over a period of eight weeks on the following treatment frequency: five times weekly for two weeks, three times weekly for two weeks, one visit per week for each of four weeks. This is approximate, of course. My management would include activation as described in the Quebec task force report: use of manual techniques including joint manipulation, postural advice and instruction in exercise and encouragement of the patient to return to daily activities as soon as possible. The Quebec report confirms that there is better evidence for this management approach than any other, and I believe the Quebec recommendations have now been formally accepted by the Ontario Insurance Commission in a February 15, 1996, management guideline.

The cost of my eight weeks' management as specified above—and this is accurate; you can see it broken down there—total cost for that eight-week period is \$623.75, of which the Ontario health insurance plan pays out \$225 and the insurer pays out \$495.

Is it right that the insurer should be able to challenge this course of care, which is both necessary and cost-effective, without a doubt, after two weeks, ie, six weeks after the accident?

Some cases will not resolve that easily. The patient may have pre-existing injuries or structural changes in the cervical spine. Parkway through his or her recovery under my treatment the patient may aggravate the injuries through some activity. Response may be slower because of particular stresses in the patient's life. These are all factors we have to contend with day in and day out in trying to help a patient achieve their health. For these and other good clinical reasons, it may be necessary for the treatment to be prolonged, unfortunately.

If the insurer challenges this and asks for my care to be reviewed at a DAC, who should carry the cost until the DAC centre reports? Under the law as drafted, it would be the patient. The society believes it should be the insurer, subject to right of recovery from the patient, and I'll clarify this. In other words, it is a right that the insurer should be able to ask for a treatment plan, that's fine and dandy, and have access to a speedy dispute resolution in a designated assessment centre if there is a prospect of unnecessary treatment. However, the insurer should not have the right to simply stop paying when it sends a case for review.

For these reasons, the society supports the following recommended amended subsection 42(6), as already submitted by the OCA. Recommendation 2 then would be: Amend subsection 42(6) dealing with interim expenses for physiotherapy and chiropractic treatment pending approval of a treatment plan or decision by the DAC to read:

"Minimum expense for physiotherapy and chiropractic treatments

"(6) Despite subsections (1) and (5), if the insured person submits a treatment plan for services rendered by a physiotherapist or chiropractor, the insurer shall pay:

"(a) the incurred costs for services rendered during the first eight weeks—not six; we're recommending eight weeks—"of treatment by either or both of a physiotherapist or a chiropractor."

The insured would have potentially eight weeks of chiropractic and eight weeks of physiotherapy, not six weeks including both. There would be more leeway there.

"(b) Where the insurer disputes any of the services and the matter is referred to a designated assessment centre, the incurred costs for the services rendered on visits to a chiropractor or a physiotherapist after eight weeks but before receipt of the determination from the designated assessment centre, provided that these costs shall be recoverable from the insured by the insurer if, in the opinion of the person or persons who conduct the assessment, the services were not reasonable and necessary."

So if the DAC assessor, the chiropractor DAC assessor, determines that the treatment wasn't necessary, then at

that time it's the responsibility of the patient to pay back the money.

Finally, in conclusion, health care and rehabilitation benefits all need to have proper controls, no doubt. The society has tried to show in this submission, however, that necessary acute care services are not expensive and are subject to overcontrol in the draft legislation. The real cost concerns for insurers in health care are actually high-tech, multidisciplinary rehab facilities that institute multiple concurrent forms of care at an early stage, and individual practitioners who treat for many months or even years regardless of treatment results or outcomes.

In legislation that creates a fair balance between the rights of insurers and patients, there should be adequate guarantees for necessary acute care services. The provision for these should not be confused with other costs involved.

The Chair: Thank you very much. We have about five minutes each for questions, and we could start with the third party. Mr Kormos, you get four.

Mr Kormos: We'll put that in the bank. We'll just put it on the ledger sheet, okay? Some time next year.

This whole debate can fall into a *reductio ad absurdum* about who's the gatekeeper. One of the problems with no-fault, as experienced, in my view, from 1968 onward, has been that at the end of the day, if the insurance company shuts off the funds, the victim, the injured party, is left high and dry.

I appreciate your proposal, but what about the fact that we have to give some credence to the legitimacy of the health care professionals who diagnose and then develop treatment programs? Again, most of the health care professions are highly regulated. Others would like to be more regulated so as to be included in the sphere of practitioners.

Why simply this? Why shouldn't it be a requirement that if the insurer disputes the validity of a particular treatment protocol or regimen, the onus is upon them to appeal to the Ontario Insurance Commission for an order that that treatment regimen be terminated? Why should we risk the long-term welfare, health, of an injured victim with what could be very artificial time lines? I appreciate you've expanded it here in your proposal, as I understand it. But surely there must be some cases where even that would not be appropriate. Why do we disregard your qualifications, the qualifications of other people who've appeared here today, like massage therapists, occupational therapists, others, physiotherapists? Why isn't the onus on the insurer to dispute the validity of the health care regimen when it's being provided by any numbers of the people who are recognized? I tend to agree that massage therapists, OTs and the others who have so far been excluded should be recognized as practitioners for the purpose of providing services. Wouldn't that really be a more legitimate and useful way of doing it and protect the interests of the injured victim?

Dr Brimmell: As far as I understand, the insurer is responsible if they see that there might be a case of inappropriate treatment. They are responsible for sending the patient to a DAC. They are responsible for that.

Mr Kormos: But you see, the problem is that the insurer can be appealed from by an appeal to OIC for

mediation arbitration. But that can end up being after the fact, after there's been an interruption, and even a DAC in itself need not necessarily be the final word.

Dr Brimmell: It never is, no. But at least it gives some kind of control over whether the treatment's appropriate or it isn't. I see no problem whatsoever with the insurance company calling for a DAC assessment. However, it's the nature of the assessment that's the important issue. It's whether or not the insured is going to get an adequate call by whoever's doing the assessment.

Mr Kormos: I know I've got 30 seconds left, Chair, at least, if not 60. Who should be providing the leadership in terms of coordinating and planning a treatment regimen and considering all the disciplines that are available to an injured person?

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Dr Brimmell: Initially, it should be the job of the first practitioner that the patient has seen. We're trained in school to be able to decide whether or not a patient should be receiving treatment A, treatment B, treatment C, and we can designate an initial treatment plan. And sure enough, nobody's perfect. If that initial treatment plan doesn't fare out for the patient, then it's time to have another party look at that patient's treatment plan.

Mr Kormos: Should it be multidisciplinary? Should there be a requirement that you and the massage therapist and the OT and the physician coordinate your efforts and communicate with each other?

Dr Brimmell: Not initially. I think it's the responsibility of the first person that patient wants to bring his health care services to. Then whoever that be, be it a chiropractor or whoever, should be able to decide what kind of treatment plan to set up for the patient.

Mr Kormos: Okay. Thank you kindly.

Dr Brimmell: Then after that, failing that, then more of a multi—after. If one part doesn't work out, then refer out and try to get a different opinion from somebody else.

Mr Kormos: Lloyd Taylor would want me to say hello.

Dr Brimmell: Great. Thank you.

The Chair: Can we move to the government side, please.

Mr Sampson: Thank you for your presentation. I just want to get some clarification. Your example on page 3 of your submission shows columns for OHIP and insurer. Does this mean that in this particular situation you'd be billing OHIP \$225.75?

Dr Brimmell: Have to, by law.

Mr Sampson: Okay. Second item. Your example of what happens between the time that somebody is allocated or destined to go to a DAC and the time when a DAC assessment comes out: You say it would be the insured who would sort of underwrite that risk. Insurance companies would pay, but if the DAC came against the insured, then it's the insured who would be expected to pay back the insurance company. We've actually had somebody in our Toronto hearings suggest it should be the treatment provider, since it's the treatment provider who determined it was necessary to begin with. How do you feel about that?

Dr Brimmell: I think that's not far off base at all. I think patients trust what the health care provider is telling

them, and if the doctor doesn't come through for the patient, maybe there should be some onus on the doctor as well.

Mr Sampson: Or the chiropractor who said it's necessary treatment. You go to the DAC and the DAC says, "No, I'm sorry, it's not necessary treatment." Do you think the chiropractor should be obligated to refund that money to the insurance company?

Dr Brimmell: I think we should consider that. I'm not saying yes or no, but we should look into that, because, yes, if I were a patient, I'd be pretty ticked off—pardon my use of language, but—

Mr Kormos: I know what you were thinking when you said that.

Dr Brimmell: I would be upset. I put faith and trust in that chiropractor to give me advice, and I'd be upset if I were a patient and I'd go back to the chiropractor and I'd say, "Hey, look, you told me this was necessary treatment and they're coming back and saying it's not." But it doesn't always necessarily mean that the DAC is right. The DAC might have made an incorrect evaluation of the patient too. So there's grey area, but there is validity to raising that issue, for sure, and the onus could also be placed on the treating practitioner for recovery of some of that cost. If I were a patient, I'd go back and say: "Look, Doc, this is your fault too. Let's split the difference."

Mr Sampson: Yes, although I think the suggestions from the Toronto hearings were that there'd be no splitting the difference, it would be basically a receivable that would be carried by the practitioner until the DAC results were determined and therein would determine whether or not the receivable was paid or written off.

Mrs Marland: I'd like to turn to page 3, at the top, where you have the list of fees. I guess when I first glanced at it, I was following you through the rest of your brief and I glanced at it quickly and I thought that the total fee was \$623 and the OHIP portion of it was \$225, but that's not correct, is it?

Dr Brimmell: Is that not adding up?

Mrs Marland: No, I haven't added it up. But is the OHIP a portion of the total?

Dr Brimmell: Yes, it is.

Mrs Marland: And the \$495 is the balance.

Dr Brimmell: Maybe that's not totalling up, is it? No. Okay, it's not totalling up. Yes, there's a typo there, of course. Thank you for bringing that to our attention. The OHIP portion plus the insurer portion should be a total of, it looks like, over \$700 probably.

Mrs Marland: The OHIP column and the insurer column should total your reimbursement in this case. I realize this is only an example, but OHIP and the insurer pay your fee totally.

Dr Brimmell: Yes, from two different sources under this situation.

Mrs Marland: Just to really put the cat among the pigeons, how did OHIP ever get involved in paying this? Do you know the history of that?

Dr Brimmell: I think the year was 1970, if I'm correct—

Mrs Marland: No, not in paying chiropractic fees. I should tell you that I'm one of those people who felt the chiropractic approach to medicine should have been

covered long before it was. I know that originally OHIP only covered a portion of the fee. My question in this instance is about the fact that OHIP is paying any of it when it's a claim for a motor vehicle accident.

Dr Brimmell: As far as I know, in terms of how the law is written, every possible payment other than insurance has to be used first. Once all that is exhausted, those portions are transferred over to the insurance companies. It's written by law that we have to bill the other health plan first before we can start to bill the insurance company. A patient has \$220 of OHIP coverage in a year, less the social contract. Once that \$220 is used up, the balance of that money is transferred over to the insurance companies afterwards. As far as I know, it's law that it has to be done that way.

Dr McCallum: I know where you're getting it. I've had patients, actually, who complain about that, especially if they're under regular care and they have that OHIP to use on their own, outside the accident time. They're saying: "Why am I using up my OHIP, why am I using up my extended health care, when it's supposed to be covered by an insurance policy for the accident? This is no-fault insurance." They'll use up all of that and then, say, for the next eight months of the year, if they want to come in and get adjusted on a regular basis, they're paying out of their own pocket. They have no OHIP coverage.

Mrs Marland: That sounds unfair to me, from the standpoint that I may already have been a patient because I have a precondition, and then afterwards I'm going to have to pay for it all myself.

Dr McCallum: Exactly. There was a time, I think before the no-fault came in, when patients actually would go to the insurance company and say, "Listen, I want to be paid the whole thing." And they were. I believe they were paid the whole insurance cost for the care so that their OHIP would be left after the acute care for the motor vehicle accident was covered.

Mr Phillips: I'm very intrigued by the top of page 3 too. "The report fee to insurers, say, \$100": Just for my own information, what is that?

Dr Brimmell: The initial motor vehicle accident report we have to fill out is normally \$50, and then on average, once a month usually, we'll send in a \$15 report just as a progress report to the insurance company letting them know how the outcome of the treatment is going for the patient. So we threw in the initial \$50 report plus four others.

Mr Phillips: So around \$100 for reporting, and that gets to your \$720 or so. I think the proposal is to stop OHIP from paying here and it'll all be on the insurance premium, I gather.

Dr Brimmell: We have heard that.

Mr Phillips: I think that is part of the proposal, and I gather that's another 2% or so increase in the premiums, but I gather from listening to you that you would support having OHIP removed from this schedule and having it all come from the insurance premiums.

Dr Brimmell: We support that, yes.

Mr Phillips: Okay. Just as an indication of other health professions with a similar little chart, would they have a similar OHIP number in here? It looks to me like

a little more than a third of your fee comes from OHIP. Would that be similar for other health professions?

Dr McCallum: For the medical people, it's totally covered, isn't it?

Dr Brimmell: Yes. As far as physiotherapy is concerned, I don't know, but for medicine, it's totally covered. I can only speak for the chiropractic profession. We are different in the fact that our fee comes from two different sources under most situations, and I think that is unique to our profession.

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Dr McCallum: Are you aware of the Manga report that came out that talked—

Mr Phillips: I probably am. I'm not sure I've read it, though.

Dr McCallum: Basically, it was the cost-effectiveness of the care and the fact that—

Mr Phillips: So you normally would charge OHIP how much per visit?

Dr Brimmell: It's \$9.65 for a regular treatment.

Mr Phillips: And when you're dealing with a case like this, you charge \$25.65, is that right?

Dr Brimmell: It's the total fee: \$9.65 from OHIP and \$16 from the patient totals \$25.65.

Mr Phillips: I mean if you were normally dealing with a non-accident, it would be the \$25.65 they would pay.

Dr Brimmell: It's the same fee. We don't have two-tier billing, and that's something we should discuss too. In our profession, and I'm sure in others, there have been known instances of two-tier billing. A chiropractor might see it's an insurance claim and might increase his fees because of that. That's illegal in our profession. We do have peer review to handle situations like that. Of course it happens on occasion; it's rare, but it does happen. Our fee for treating a person who comes in after hurting themselves shovelling snow is the same fee for treating the patient who's been involved in a motor vehicle accident.

Mr Crozier: Thank you, gentlemen. Just to clarify this a little more, because there seems to be some confusion around it, prior to 1990—you were correct—OHIP paid for any medical costs whether it be an accident, sickness or anything else. And then in 1990, the then government of the day chose to take that off the table and have the insurers—or excuse me—have OHIP—now I'm not going to be able to clarify it—have OHIP accept these costs but not be reimbursed for them, is what it was, as of 1990. And now the government is suggesting in this plan that those costs, at least to some extent, be reimbursed, about \$100 million. Part of our concern is that the exercise we're going through is to reduce or stabilize insurance rates, yet in the plan we're looking at, in the draft legislation, there still may be an additional cost of about 2% for that.

Dr Brimmell: If I could just refer back to the Manga report, that report showed that using chiropractic services can save hundreds of millions of dollars annually. Even though utilizing the services is seen as increased costs—your example was \$100 million—the ancillary cost savings in fewer sick days, with a quicker return to work, and fewer high-tech, higher-cost examinations, would be seen down the road.

Mr Crozier: And that was conducted by?

Dr Brimmell: Pran Manga, from the university of—it was a report sanctioned by the Ontario government, the health—I'm at a loss for words, but the Ontario health government sanctioned this report in 1993 or 1994, just a year or two back, and the results were tabled two years ago showing that chiropractic services greatly reduce costs to the overall system.

The Chair: Thank you very much. We appreciate you two gentlemen joining us today on behalf of the Thunder Bay and District Chiropractic Association for your input into our deliberations.

MATTHEWS AND ASSOCIATES

The Chair: We now welcome Matthews and Associates insurance, Mr David Leskowski. Welcome to the committee, sir.

Mr David Leskowski: Committee members, thank you for including public input in this process. This is a refreshing change from the style of the previous government.

I am sure that by now you have heard many varied opinions of how auto insurance in Ontario should work. I am also sure that most vocal have been the special-interest groups. My first request of this committee is for you to be diligent in your efforts to achieve a balance between all the special-interest groups and the interests of the majority of Ontario citizens, who may remain silent except for their comments in brokers' offices and on election day. I admit that insurance brokers do fall into the category of a special-interest group. Our income is derived from insurance premium commissions, and we obviously benefit financially from premium rate increases. I would like you to appreciate, however, that Ontario insurance brokers are encouraging you to take actions which will stabilize or reduce insurance rates.

Today I am hoping to relay to you the opinions and needs of Ontario's citizens. Brokers are on the front lines delivering insurance products and services, and we hear daily from consumers. We are also in continual contact with insurance companies, adjusters, appraisers, lawyers etc.

Finally, as you are aware, auto insurance affects not only those who drive vehicles; it affects the health care system, businesses and all taxpayers. Our client lists include corporations, municipalities and property owners. Auto insurance seems to affect almost everyone in one way or another.

The first general comment I would like to make is that there are always two views of insurance products and services: the before and the after. And here is where the challenge for the future of your plan will arise. At the same time that you hear from those who have had to draw upon the benefits of insurance coverages and now want insurance policies to take care of every problem in every situation, you will hear from those who have not had to use their insurance and whose only concerns are about the product's accessibility and cost. Generally, after an accident, the premium originally charged is an insignificant detail, but before an accident, it is everything.

It is no secret that although auto insurance benefits and coverages are of great concern to all Ontario citizens, it

is the escalating cost of the premiums that consumers are presently focusing on. You have already been presented with the views of the IBAO, and I would to endorse the four points our association made: Auto insurance in Ontario must be fair, available, affordable and understandable. I would like to give you some of my thoughts on these topics.

First, regarding affordability, the draft legislation appears to be on the right track. Your proposals solve many of the problems caused by the ill-conceived Bill 164. While there are reductions in some basic benefits, additional coverages can be purchased. If there is any advice I can offer, it is to promote more public awareness of how auto insurance works and then to allow consumers more freedom of choice. Many of my clients carry other insurance policies that duplicate benefits which the present auto insurance requires them to buy as mandatory coverages. They would be happier if they did not have to buy these coverages twice. Perhaps in your search for premium reductions, you will discover additional areas to allow for more consumer choice. Why not make income replacement and death benefit areas more subject to the policyholder's needs? Many carry these coverages through other forms of insurance, and some have a difficult time understanding why the unemployed must purchase income replacement.

I encourage your efforts to improve and monitor the delivery of rehabilitation and medical services, and to combat fraud, which increases premiums for honest citizens. You must continue to work with the insurance companies and cause them to increase their effectiveness in handling claims. Inefficiencies greatly inconvenience those who need the benefits they claim and they serve to increase premiums without any added benefit.

Next I would like to address a major concern that brokers have about the affordability of the auto insurance product, which is the return of tort into the system. It was widely believed that the escalation of costs of the pre-OMPP system was due to numerous, lengthy and costly litigation activity. The introduction of the no-fault system appeared to actually reduce the cost of auto insurance. Then it was believed that the partial return to tort brought about by Bill 164 was again responsible for steady premium increases. While the IBAO and most brokers are on record as saying they are not concerned in principle whether the insurance is pure no-fault, pure tort or a combination of the two, it is this recent history which makes many uncomfortable with the reintroduction of tort into the system.

My suggestion in this area is for you to watch with great care the costs caused by allowing the right to sue for both economic loss and for pain and suffering. It could be that the problems caused by the previous tort systems lay not with the activity per se but with the excesses in many cases. This will mean that for your new system to succeed, you will have to monitor the awards that judges make and the effects these rewards have on the insurance companies. Also, you will have to watch for the length of time that it takes for victims to have their complaints resolved by the court system and you will have to compare the costs of litigation against the benefits received by the claimants.

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If those who must resort to the courts are well served by the new system and the consumer is able to pay for all of the associated costs, including the additional legal fees, nobody will be happier than the insurance brokers of Ontario. Again I remind you that your duty here is not to provide for insurance brokers, for lawyers or for insurance companies but for the citizens of Ontario who gave you your present mandate. I would also remind you that you have a duty to care for those who may not be able to afford to hire legal counsel at the same time as allowing for those who are able to and demand the right to do so.

Also affecting costs are those who find it less expensive to pay a \$1,000 fine for driving with no insurance than to pay their appropriate premiums. Why should good drivers continually subsidize the bad ones? Perhaps violations while operating snow machines, ATVs and other licensed vehicles which are now covered by insurance policies should appear on a driver's motor vehicle record. A review of our road safety regulations could reap big benefits in the area of reducing claims and insurance premiums. Brokers are also concerned that not all insurance companies subscribe to electronic systems which track insurance claims, so bad drivers are continually charged insufficient premiums. In these cases, there is room to improve both the affordability and the fairness of auto insurance.

I have two final comments on the costs of auto insurance. Could you please review the 5% PST that the brokers must now charge when a policy is purchased? Surely, if we can't do without the revenue this brings into the province, it could be harmonized with the existing 3% premium tax paid by the insurance companies. Again, here is a huge inefficiency that someone must pay for without accompanying benefit, and ultimately all costs are passed on to the consumer.

Regarding the proposed offloading of health care costs back on to auto insurance policies, if this is necessary, it must be done with extensive public education. We are all learning, with cutbacks from federal, provincial and municipal governments, that there is only one taxpayer. Additionally, the public may be becoming more receptive to additional user-pay situations as long as basic services continue for all, including the least fortunate among us. Purchasers of auto insurance may accept rate increases which end up going into the health care system if they know that it is only an alternative to increasing their provincial taxes by the same amount. If the policyholder-taxpayer does not know this, the increase in auto insurance will be perceived to be just another cash grab by greedy insurance companies with the permission of the provincial government.

This leads to my final points, regarding the new product being understandable. Even after six years of no-fault and modified no-fault insurance in Ontario, great numbers of the insurance-buying public still do not understand how the system works. The few brochures distributed did not do the job. The recently introduced new Ontario auto policy clear language wording was a step forward, the errors it contained and all, but I encourage you to continue on with the process of public education.

You will find brokers anxious to cooperate with these efforts, and there is room for improvement at the OIC.

Someone needs to review the fine print contained in our insurance policies. Hopefully, it is someone with a little common sense, a lot of authority and a degree of compassion. Every day, a broker tries to explain why some accident benefits that the purchaser does not require are mandatory but that the optional number 44 endorsement should be considered mandatory. Then we have to explain why a motorist who chose to hit a snow bank instead of a child will suffer a reduction in his driving record and premium increases. Next we explain how hitting a moose doesn't affect a driving record but hitting a cow does. Then we explain how, although a newly acquired vehicle used to be covered by their Ontario insurance policy, now it's not during the winter because they have a sports car stored in the garage without full coverages until spring. We explain that when the tent trailer they did not insure with the towing vehicle came loose while towing and did extensive damage to someone else's property, the damage cannot be covered by the auto insurance because someone can sleep in it, but if it was a boat trailer it would have been covered.

So insurance brokers look forward to the implementation of new legislation. We would like to continue to work with you in the ongoing process of improving it.

Mr Wettlaufer: Mr Leskowski, I really thank you for your submission today, especially that second-last paragraph. It makes me remember why I'm glad to be doing this rather than being in the insurance business again. How would you view the IBC's projection of trends of 7% or 8% increases in premiums over the next five years?

Mr Leskowski: How in the world did they arrive at that? What actuarial firm did they advise? Who provided those statistics? Can anybody answer that?

Mr Wettlaufer: Miller, who is supposedly the IBC's actuary.

Mr Leskowski: I think it's difficult. It's like standing on two bars of soap. On the one hand, you're doing tremendous things with reducing the cost of the accident benefits schedule and monitoring fraud. I see tremendous savings there. On the other hand, I really don't know the details of how the tort system will work. I don't know how that's going to pile up one against another. I think there are too many variables in this case. One thing for sure, you are going to be reducing costs significantly with this system compared to what we have now. So, regardless of what the IBC may say, go ahead with at least this. If nothing else, repeal Bill 164.

Mr Wettlaufer: I have two more short questions. What would you suggest would be a good minimum fine for no insurance? You suggest here, obviously, that \$1,000 is too low.

Mr Leskowski: I don't know if anyone is worried these days about something unless it's \$10,000 to \$20,000. It has to compare with the cost of insurance. Although, as you know, the fees are capped in the Facility Association, people are charged at times as much as \$10,000 for a year of insurance. There's no reason why they wouldn't be acceptable of a fine of the same amount as the insurance that they would have to pay. The

fine has to exceed the insurance premium. It's got to be a better deal to be a law-abiding citizen than to be a criminal.

Mr Wettlaufer: In Thunder Bay, you have a limited number of companies which are willing to provide automobile insurance. Do you foresee any problems with the availability after this product is introduced?

Mr Leskowski: I don't; I really don't. I know that some companies are now pressing for balanced portfolios. They're still pressing for more policy sales, encouraging us into almost a tied selling situation simply because of the reluctance to provide auto insurance. I don't know if this package will reduce the availability of it. Every company that I have talked to seems to be looking forward to the new legislation and is developing a more open-for-business attitude.

Mr Wettlaufer: So this would help the brokers help their clients?

Mr Leskowski: This definitely will help the brokers to help their clients, yes.

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Mr Crozier: You've said in your outline here that if there's any advice you could offer—that seems to be kind of exclusive of everything else—it's to promote more public awareness of how auto insurance works. Do you expect the government to do this?

Mr Leskowski: No, I believe that it's our job. That's what we get paid for but we can't do it all on our own. I can contact only the people I have access to in my office. If other brokers are busy doing something else, they're not going to do it with the clients that affect them.

There has to be some kind of initiative that reaches into every insurance broker's office, and on top of that, don't forget there are the direct writers, there are the program writers, there are the captive agents, there are the banks, there are the telephone lines; the brokers access a certain segment of the marketplace.

It's another one of the major complaints about the way insurance is distributed in Ontario. As an insurance broker I have to have a licence to give someone advice about travel insurance, but you can walk into a bank and you can buy it over the counter from someone who knows absolutely nothing about it. This is how life insurance is sold at a bank.

I can do the best job that I can and reach my limited clientele as a broker but I have absolutely no control over what happens in the Allstate office, the Co-operators office, the CIBC insurance line. The government has to take some kind of a proactive step in this. It has to be.

Mr Crozier: I know this is just kind of opinions between you and me and those of us here, but don't you think it would be better if it came from the broker, the agent, the distributor, whoever it is that the person buys the insurance from? There's kind of the front line who can sit down, who can explain this to an insured because, as you I think have said, when they have an accident, you're certainly the one the insured's going to come to if they thought they should be covered more—

Mr Leskowski: I can assure you, we are at full speed on this right now. I am amazed. We hand out OMPP brochures. We get the information from the insurance

commission. Every person I talk to about auto insurance, I discuss with them how the system works. Every time there's a claim you discuss it with people, which company pays which, and there are policemen driving around on the streets of Thunder Bay who don't know how no-fault works. There are policemen in the city who believe that because we have a no-fault system, you can cause an accident and not suffer on your driving record because you didn't get charged with a violation, a moving traffic violation.

Mr Crozier: But policemen, albeit, have to know the Highway Traffic Act and the Criminal Code, so you're kind of suggesting the Insurance Act would be helpful, right?

Mr Leskowski: It would be helpful, yes. There is a job to be done and it's amazing how much of it is still left to be done. People do not know how the system works.

Mr Kormos: One of the problems brokers are having, I'm not sure about up here but certainly in the Toronto area and down through southern Ontario, is that brokers are being cut loose by insurers. We've got some brokers down there who have but one insurer left that they're selling product for. Do you think brokers should be obliged to, by way of full disclosure, identify how many insurers they represent and who they are?

Ms Leskowski: That's the case as it is.

Mr Kormos: I'm talking about full disclosure. I'm talking about in terms of providing quotes to a person seeking to buy insurance and identifying the name of the companies.

Mr Leskowski: I think that's a terrific idea. It is actually the case in our office. It is our procedure to tell people which markets we access, and if they request it, we tell them where else they can go to find alternate markets. It would not be a bad move for that to be mandatory.

Mr Kormos: Why not have a broker required to provide a broader cross-section, even if she or he does not represent those particular insurers?

Mr Leskowski: I don't think that's a bad idea. Our insurance brokerage is part of a group known as the INS, Insurance Network Solutions, and very shortly we'll be starting a direct phone line on auto insurance comparisons. When consumers phone that line, they will get a listing of the rates of all of the companies in their area and then they will be told which are INS-broker-represented, but we will not represent all of those markets.

Mr Kormos: Do you ever advise your insureds not to report a claim because it's going to have an impact on their premiums down the road, or on availability?

Mr Leskowski: No, we can't do that. We can advise them if they call. Sometimes people call and say, "What if?" and you can't put the words in their mouths. You know that it's happening. You can do neither. I'm obligated, when somebody calls, to tell them what the situation is, that I am obligated if they give me advice of a claim to report it.

Mr Kormos: Do you know that there's a brokerage here in Thunder Bay that has a pamphlet published that says, "We as your broker may advise against making a small claim even if you have never claimed before"? Is that consistent with the standards that you expect as a broker?

Mr Leskowski: I wasn't aware of that, no. Is that property or is that auto?

Mr Kormos: Property and auto.

Mr Leskowski: Property and auto. I'm not sure. We have one company, Kemper insurance, that actually has a clause in the book known as a waiver of small losses. There are some companies that have the availability of waiving small losses, which I would be in favour of, but currently that's not the case with most brokers.

Mr Kormos: You could only do that if it's given to you as a hypothetical. In other words: "I'm not calling for myself. I'm calling for my neighbour who suspects that he might have had a fender bender in a parking lot. If he were to and he reported it, would that result in an increase in premiums?"

Mr Leskowski: I'd be forced to treat it that way. If I didn't even recognize the voice, I would have no other option.

Mr Kormos: So a wink is as good as a nod to a blind man.

Mr Leskowski: Over the telephone he can wink as much as he wants.

The Vice-Chair (Mr Tim Hudak): Thank you very much on behalf of the committee for your presentation today. Have a good day.

DOUGLAS SMITH

The Vice-Chair: The next delegation I believe is Mr Douglas Smith from Smith Brokers Ltd. Good afternoon and welcome to the finance and economic affairs committee.

Mr Doug Smith: I apologize to the committee for not being here this morning at 9 o'clock. Unfortunately, my other responsibilities—I'm president of the Thunder Bay Chamber of Commerce and other things sort of—there are many issues ahead of us today, and I apologize for not being here earlier.

The Vice-Chair: We're glad that you could make it. Would you mind introducing yourself for Hansard, please, and then begin.

Mr Smith: Unfortunately I don't have a written presentation to leave with you, but I will be summarizing my remarks and forwarding them down in a letter. I appreciate the opportunity of coming here and addressing you.

My name is Doug Smith. I am presently the owner of our family business, which was started here in 1946, celebrating our 50th anniversary this year. More important, since 1986, I have been the regional chairman for the IBC ICAN network and have followed this issue very closely since 1986 and have watched the evolution of it. Recently I was asked to be the northern spokesperson and I continue in that regard.

I have very much a verbal presentation to you and perhaps a question period—an expanded question period might be beneficial to wrap up your day today—but I would just say that from my perspective and just to qualify my educational status, I have my fellowship with the Insurance Institute of Canada and my commerce degree from Lakehead University.

From my overall observations of what's been going on from the very beginning, I truly respect your challenge, collectively, to define automobile insurance. I think the

previous speaker has touched on the fact that it has politically spiralled to almost an out-of-control type of situation premium-wise.

I would echo the previous speaker who said that the consumer is totally frustrated and very much confused with the product. I would also say that the brokers are confused and the adjusters are confused. I think what has to happen is that there has to be some stability put into this product. This'll be the fourth change to the system in the past six years, since 1986. We go back to tort and what drove it to the OMPP, and all three parties now have had an opportunity to address it.

I appreciate that you are listening to a myriad of groups and what not. Somehow you have to take all that information and you have to balance it out and you have to get to a product that you can put a price on that has some stability to it in the marketplace. I think that the premiums, as they are being calculated now with the changes—the IBC and I think the entire insurance community acknowledges the need and the importance of stabilizing the product, because Bill 164 has spiralled the premiums out of sight again, and if it continues on, the rate increases are going to be up to 15% over the next five years.

The present system is talking about trying to put a handle upon some of those costs, but it's going to be 7% to 8%. The current premium level now is extremely high for the consumer, and the higher it goes the more fraud there's going to be into the system, the more abuse there's going to be in the system, the more waste there's going to be in the system, and the more people are going to be driving without insurance.

So I think it is very important for you to try and get to a product and balance economic loss and pain and suffering and accident benefits and collision and comprehensive in the whole situation, but get to a product that puts automobile insurance to bed basically, so that it doesn't keep coming around for other changes and escalating premiums.

I would just like to also touch on a couple of points. The auto insurance has failed to be profitable for the insurance industry in five of the past nine years, and I think that, unless you can get back to a profitable industry—and in 1986, going into OMPP, I believe that profit was defined reasonably as being about a 12% return—if you can get back to a product that offers some stability in terms of profitability for the insurance companies, you will get the forces of the marketplace coming back to better care for the consumer.

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I think that right now what is occurring, with escalating premiums and all the confusion that goes around automobile insurance, is that you are slowly creating the situation which is going to allow the banks to come into the business and public insurance to be debated again. With all due respect, we've gone through that, and I do not believe that is in the best long-term interests of the consumer, either one of those. But I think as long as this product stays out of control and you don't try to rein it in with the coverages and the premiums, you are driving it to that competition. So I think it's very important that some sort of stability be brought back into the product.

I commend you for all your deliberations and for travelling the province and for coming to Thunder Bay and listening to the north, because northwestern Ontario is different. We have distant concerns here, we have health care concerns, we have rehabilitation concerns. If the OIC is going to be looked at, perhaps we can have some sort of a branch office of the OIC up here or some sort of representation up here, because I think our needs are unique from southern Ontario.

It might be beneficial to get into some questions, but I thank you for the opportunity of addressing you and I would again encourage you to bring some stability to the product. Thank you.

The Chair: Thank you very much, Mr Smith. We'll do as you suggest and get into some questions. If we could start with the opposition, I think we can have five minutes of questions.

Mrs McLeod: I'll just lead off then, Mr Chairman. Doug, you have been a spokesperson on this issue in our community for some time and we've had opportunities to discuss it in the past. I know that as OMPP was beginning to have an effect, it was beginning to stabilize and to start to bring about some decrease in rates, although clearly nobody thought that it was a perfect package. It was going to need to be examined in some respects, in terms of access to tort and particularly, as we've heard this morning, around some of the brain injury situations. We also saw the destabilizing of rates under Bill 164 and anticipated that coming.

I wonder if you would now comment on the combination that we have here, from the perspective of what you think it will do to premium increases as well as to stability. I'm thinking about the fact of the reduction in benefits which, on the one hand, may bring about some control over the costs; on the other hand, it's combined with a much more open access to tort, both on economic loss and on pain and suffering. Do the reduced benefits, along with that increased access to tort, almost force people into court, and what does that do to both stabilization and potential premium increases?

Mr Smith: I believe the benefits have to be defined in a more concrete manner and then allow people to buy up in their policies, if they so require. I think that is one way to look at it. In regard to the tort, again pain and suffering is very difficult to quantify. Economic loss is more quantifiable but the consumer—it's affordability and availability of the system, I believe. The affordability now has gone too high for people.

I don't think any system can be all things to all people. I believe, if you are going to open it up to tort, we must remember that what initially took it from a third-party adversarial system to the OMPP system was what was going on with the adversarial tort system in 1986, when bodily injuries were \$1.6 billion and \$800 million of that was going to settle the claims, which were typically taking four years to get to the claimants, and that system wasn't working either.

I guess it's that balance of, if you have to reduce and quantify benefits, I believe people are looking for a stable automobile premium, however you can define that with a product. I think, just as in OMPP, it has to have time to evolve and it has to have time to find itself, but there has

to be some sort of a plan that is not changing every time the government changes.

Mr Crozier: The previous presenter made a suggestion when it came to the 5% retail sales tax and, as we all know, in the province of Ontario if you're going to abide by the law and you own an automobile, you have to buy insurance. It's legislated. Do you have any opinion—I perhaps know what the answer is, but I'd like a little justification for it—

Mr Smith: These are all opinions I have.

Mr Crozier: —if the 5% was removed, and I point out that it would then touch some six million to seven million people in the province of Ontario, how helpful that would be?

Mr Smith: I know when the 5% came in, people were very frustrated with the fact that they had to pay tax upon protection. I think they accept it now, but they look at the bottom line. I think if that can be taken off, that brings your stabilization of the premium and it brings the bottom line of the premium down. People are very much confused with why they have to pay a 5% tax on automobile insurance. It does add significantly to their bottom line of what they're paying for insurance.

Mr Crozier: As a front-line person, do you think the perception out there in the public is that this time around we're going to get auto insurance at a reduced rate in fact?

Mr Smith: I think they've heard that so many times, I think they are very, very overly frustrated with insurance, and I don't think they believe anything is going down and I don't think they understand that any more. Very learned, professional people don't understand automobile insurance in terms of how the policy responds, in terms of what it means. There's a great deal of education that has to occur once you try and stabilize the product because it's changing so much. It's very difficult for the consumer and it's difficult for a lot of the professional people in the insurance business.

Mr Crozier: Then if the perception isn't that it will go down, and by stabilization we mean if you could get through a year or so where you didn't have to constantly tell your insureds that the price was going up, that would at least be satisfactory.

Mr Smith: I think people would be relieved to see some stabilization. Once the product comes together and the more players in it, the more competitiveness in it, some companies will be more successful than others and the natural forces of the marketplace will work to drive the rates down or stabilize the rates even further.

The Chair: Mr Gravelle, do you have a brief question?

Mr Michael Gravelle (Port Arthur): A quick question, thank you, Mr Chair. Just from the northern Ontario perspective, my understanding is that there's approximately somewhere over 200 companies or insurers who were chartered to give insurance across the province and about 15 or so actually provide that service in Thunder Bay. I don't understand the business terribly well myself, but that strikes me as odd and it strikes me as meaning there's a less competitive atmosphere and that to some degree might affect rates. Is that more or less true? Are there 15 insurers out of the more than 200 that provide

services in northwestern Ontario and, if so, does that have an impact on the process and on competition and rates?

Mr Smith: There's no question that the number of players reflects the types of premiums that are offered out there. The insurance bureau, I understand, represents about 125 insurers. The exact number that are operating in northwestern Ontario have been here for a while. I think the majority of them make money here and that is why they stay here, but as the product gets more unstable, as soon as they're not making money they will look at the area and then they will start to pull out.

What you're finding now is a lot of group plans coming into play, where people can buy through Toronto groups or different areas. I think the number of markets in northwestern Ontario are stable. They have been here for many, many years and they know what they're doing, but it's difficult to get new markets here.

Mr Gravelle: I would agree with that.

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The Chair: The third party.

Mr Kormos: Mr Smith, I believe you were here when Mr Leskowski implored this government to produce a system that was going to indeed stabilize rates.

Mr Smith: Yes.

Mr Kormos: And I trust you agree with him in that regard—who couldn't?

Mr Smith: Absolutely.

Mr Kormos: Because one of the things Mr Leskowski, in the course of imploring the government to do that, said was, failing which—that is to say, failing to achieve that goal—this government might be forced to look at public auto insurance. Do you agree with that?

Mr Smith: I think that view has been looked at in its entirety, so I would trust that option is off the table. I don't believe in that.

Mr Kormos: I don't know by which government. It certainly wasn't by the last government. Do you agree that it remains a consideration?

Mr Smith: I don't think that's as much a consideration as playing into the opportunity for the banks to get involved.

Mr Kormos: Which, as I understand it, scares the daylight out of the mainstream auto insurance industry.

Mr Smith: How many banks do you have? It's definitely a big item.

Mr Kormos: It would be a real test for free enterprise, wouldn't it?

Mr Smith: Is the consumer being best served that way?

Mr Kormos: One further, sir. IBC, the Insurance Bureau of Canada, embraces—I'm not as concerned about the return to tort here, because in my view basically it's the Saskatchewan model of tort, which is the revised full tort system there. It's only benefits in excess of your no-fault benefits if you're an innocent victim, as compared to an at-fault.

IBC talks about premium increases of 7.6% a year, give or take. Ms Maddocks from Zurich insurance—that's the second-largest insurer in Ontario, and surely Zurich has got enough experience—you've got the chart there.

Mr Smith: I do.

Mr Kormos: Surely Zurich's got enough experience in the area to understand what's going on. She talks about premium increases twice, almost three times of what the IBC says. Who's right?

Mr Smith: I would say the IBC has more of a balance of the industry than one insurance company.

Mr Kormos: So is Zurich simply out to lunch, or are they trying to whipsaw the issue so that the government will reduce the benefit levels even further?

Mr Smith: My own personal opinion is that Zurich is going upon their experience and I know they've had a couple of tough years. That's why it's a competitive marketplace. But IBC represents 125 companies and they get a much broader view of what everybody's experience is. That is why under the government plan, by July the average premium will be \$1,140 in this province, and under Bill 164 it would be almost \$1,400.

Mr Kormos: The interesting thing, though, is that OMPP, the introduction of no-fault, did exactly what Kruger, what Osborne and others said it would do. That is to say it was a one-time-only reduction in price, that the increases annually after its introduction were going to be consistent with the increases in the tort system and when you look at 1991, 1992, 1993, you see an initial reduction in costs paid out or benefits paid out under bodily injury and accident benefits, but you see an incline at the same rate that existed previously prior to Bill 68.

Mr Smith: When did Bill 164 come in?

Mr Kormos: In 1994, was the first year for 164. Again, you see a similar rate of increase for 164, with far enhanced benefits. The fact is, do you adopt the proposition that no-fault and tort, both are going to grow at the same rate, as Osborne said and as Kruger said?

Mr Smith: I think they both reflect what's going on in society in a big way, the cost of health care, the cost of rehabilitation services. Unless you can put parameters around those to control those costs and find scales of economy in those operations, then—

Mr Kormos: Fair enough. One issue about fraud, because we're all concerned about it. We know there's a whole lot of counterfeit pink slips out there, huh? Blank ones that you buy in the hotel for \$50 or \$100? Where do those pink slips come from, the ones that are forged? Where do they come from?

Mr Smith: Forged pink slips?

Mr Kormos: The genuine pink slips that are forged. Where do those blank pink slips come from that you buy in hotels and taverns?

Mr Smith: Are you going to tell me that?

Mr Kormos: No, I'm asking you.

Mr Smith: Am I to know that?

Mr Kormos: The only people I know who have big stocks of them are brokers. Where do they come from?

Thank you, sir.

The Chair: It is not normal for us to badger a witness.

Mr Smith: Thank you, Mr Chairman. I think I asked for it, though, in all fairness.

The Chair: Everyone feels compelled to defend Peter.

Mrs Marland: Do you want to take a vote on that?

The Chair: We'll move to the government.

Mr Wettlaufer: Peter, I can tell you where they come from. They come from the odd broker who might be a

little bit less than conscientious or perhaps may be a guilty broker, guilty of fraud. Do you know, there's probably the same number of brokers who are like that as there are lawyers or doctors or anybody else.

Mr Kormos: Yes, but there's at least one of those brokers in every small town in Ontario.

Mr Wettlaufer: You're on my time.

Hi, Doug, how are you?

Mr Smith: Good, Wayne. Good to see you. So this is what you're doing now.

Mr Wettlaufer: Yes, I love it.

Mr Smith: Good for you. Bring some sense to it.

Mr Wettlaufer: You heard David talk about a minimum fine for no insurance. Do you have an opinion on that?

Mr Smith: Again, my opinion on that is whatever the fine might be, I don't think that's the answer. I think rather than fining people you've got to get it to a point where it's affordable for people. Once you get it beyond that affordable level, it doesn't matter how much the fine is going to be, people are still going to be driving without insurance. I think that's the key, to try and stabilize it so that people can afford the product.

Mr Wettlaufer: Just for the record, do you happen to have any figures there that would indicate what percentage of the total automobile insurance market Zurich has? Is it around 8% or something like that?

Mr Smith: I don't have that handy.

Mr Wettlaufer: You don't have that, eh? I was hoping you would. I'll have to check that myself, I guess.

Mr Smith: I could get that information for you, though.

Mr Wettlaufer: Could you? And send it to us?

Mr Smith: Sure, yes.

Mr Wettlaufer: Okay, great, thanks.

Would it be of assistance to insurance brokers in providing service to their clients if they were able to obtain immediate access to the driving records when the client comes into your office?

Mr Smith: It certainly would. No question about that. Because we get into a lot of confusion. Quite often, people have memory lapses of what actually has occurred in terms of accidents or speeding tickets and violations and what not. If we had that at the point of discussion, yes, it would save a lot of confusion.

Mr Wettlaufer: You know what we're trying to do here is achieve a balance of needs against price. If I could read something to you, I wonder if you could give us a little information on it.

"Restore tort for economic loss instead of pain and suffering. Reduce weekly accident benefits to average wage. Cap health and rehab benefits, except in the most serious cases. Provide for the optional consumer purchase of additional coverage. Streamline the Ontario Insurance

Commission arbitration process—stress mediation. Scrap the 5% retail sales tax on insurance premiums."

Other than that last one, would you say that what we have attempted to do with this draft legislation meets those other criteria?

Mr Smith: It does, yes. Again, if it's going to result in 7% to 8% rate increases, perhaps there is still more that can be done.

Mr Wettlaufer: What I have just read was the Liberal Party platform in the last election. They said they would reduce automobile insurance rates by as much as 15% or 20%. Do you think that was achievable?

Mrs McLeod: It's not in fact the Liberal platform from the last election, just as a matter of record.

Mr Smith: I think over time, if the product is given a chance to come to fruition, that competitive forces will prevail, but I don't think the product has had any chance to come to fruition with all three political parties now amending it in the last six years. I think whatever you do here has to have a chance to evolve.

Mr Wettlaufer: That's a good point. Thank you.

The Chair: Thank you very much and thank you, Mr Smith for appearing before us today.

Mr Smith: Thank you.

The Chair: I appreciate your input.

Mr Phillips: Mr Chair, I'd appreciate it if—one of the members just indicated he had a document there that might be helpful for the rest of the committee, so I thought it may be useful to share that. I think you've said you got a page from the Liberal party platform, and I think it would be useful to just get a photocopy and circulate it.

Mr Wettlaufer: You don't have the red book?

Mr Phillips: No, but you indicated that's from the red book, so I'd like to see it.

Mrs McLeod: It's memorized and imprinted on my brain.

Mr Phillips: I'm asking that, Mr Chair, as a formal request.

Mr Wettlaufer: We might be able to provide that for you.

Mrs McLeod: As you have presented it.

Mr Phillips: Yes.

Mrs McLeod: And the source?

Mr Phillips: And the source. Well, I just assume it's from our book.

Mr Wettlaufer: It doesn't take long to photocopy.

Mrs McLeod: That's certainly not the format of the red book.

The Chair: There being no further business to bring before the committee, we will stand adjourned until 9:20 tomorrow morning in Sault Ste. Marie.

The committee adjourned at 1511

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Vice-Chair / Vice-Président: Hudak, Tim (Niagara South / -Sud PC)

*Arnott, Ted (Wellington PC)

*Brown, Jim (Scarborough West / -Ouest PC)

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Silipo, Tony (Dovercourt ND)

*Spina, Joseph (Brampton North / -Nord PC)

*Wettlaufer, Wayne (Kitchener PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Crozier, Bruce (Essex South / -Sud L) for Mr Kwinter

Kormos, Peter (Welland-Thorold ND) for Ms Lankin

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

Also taking part / Autre participants et participantes:

McLeod, Lyn (Fort William L)

Gravelle, Michael (Port Arthur L)

Clerk / Greffier: Franco Carrozza

Staff / Personnel: Andrew McNaught, research officer, Legislative Research Service

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of Ontario**

First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 27 February 1996

**Journal
des débats
(Hansard)**

Mardi 27 février 1996



**Standing committee on
finance and economic affairs**

**Comité permanent des finances
et des affaires économiques**

Auto insurance

Assurance-automobile

Chair: Ted Chudleigh
Clerk: Franco Carrozza

Président : Ted Chudleigh
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Tuesday 27 February 1996

Mardi 27 février 1996

The committee met at 0954 in the Holiday Inn, Sault Ste Marie.

AUTO INSURANCE

The Chair (Mr Ted Chudleigh): I call the meeting to order. Is there any business to come before the committee?

Mr Wayne Wettlaufer (Kitchener): I have two letters here, one from Allan Johnson, secretary of the Motorcyclists' Coalition, in response to a question I asked him at a meeting last week, and I have another letter from Grant, Jones and Stuart Insurance Brokers of Markham.

The Chair: You can deliver those to the clerk. We'll have them copied and distributed to the committee. Thank you very much.

SAULT STE MARIE AND DISTRICT
LABOUR COUNCIL

The Chair: We have with us today the Sault Ste Marie and District Labour Council, Mr Ron Bouliane. We have 20 minutes together, and if you would like to present us with a brief, we'll fill any remaining time with questions.

Mr Ron Bouliane: As was mentioned, my name is Ron Bouliane. I am a delegate to the Sault Ste Marie and District Labour Council, and I was allotted the task of putting together a presentation for the finance committee.

We would like to preface our remarks with the observation that although the present government was elected by an overwhelming majority, very little of its support came from that area considered, geographically and politically, to be northern Ontario. What support you did receive, therefore, we thought might be considered an aberration and may not, and probably will not, be repeated in the future if this government continues in the dictatorial manner it has adopted. You will note that there is only one sitting PC from northern Ontario, and I believe that is because most of the electorate seem to have examined the Common Sense Revolution and found it sadly lacking in just that.

In northern Ontario people try to find ways of helping each other and their communities to survive and continue. We tend to reject ideas and philosophies which we believe will harm us or our neighbours. We try instead to find ways to live and work that are beneficial, to a greater or lesser extent, to all concerned. The experience of many people from northern Ontario is that people from southern Ontario—and here the reference is to government officials, agencies and the corporate and financial sectors, which includes the automobile insurance industry—have no concept of, understanding of or sympathy for the problems or conditions that occur up here, and no

assurances to the contrary will convince many of us otherwise. Actions speak louder than words.

Auto insurance is a major problem. Many of us do not believe that the rate structure takes into account the reality of living and working in northern Ontario. For some this can mean travelling long distances to and from the work site. For others it involves having to drive long distances for medical services, schooling or any of the other situations that may arise on a daily basis. Distances driven is one of the rate determinants and can have a negative impact on an individual's premium. I went through the material and I didn't see any reference made to reforming this aspect. It's something that we do believe should be looked at.

The maximum award of up to \$400 per week for loss of earnings is also unacceptably low. In northern Ontario our living expenses are considerably higher than those of the south. For instance, we heat our homes for up to eight months of the year and in some cases—not all that uncommon—we're heating for even longer periods. With the current cost of electricity, oil and natural gas, heating alone can consume a large portion of a family's income. If you consider all the other costs incurred in operating a household, then add another 10% to 20% to that cost and you begin to see why we consider the proposed maximum award as being too low.

Allowing for the purchasing of additional topping-up coverage to bring the loss of earnings coverage back up to the present standards is a bad joke. It reminds one of a cartoon that appeared in a major magazine within the last two years. I wish I knew the cartoonist who did it because I thought it was absolutely appropriate. In this cartoon, the CEO of an insurance company was exhorting his board of directors to find a way to help regain the respect and confidence of the public and polish their tarnished image. The unanimous suggestion was to sell the public more insurance. This appears to be the path this government has chosen.

Restoring the right to sue for pain and suffering is also controversial. Even insurance companies recognize that the tort process vastly increases the overall cost of insurance; also, on the other side, 42% of awards go to cover legal costs, so if you do sue you're not going to get the full amount anyway.

At a replacement income of \$400 per week and severe restrictions on the availability of legal aid, the right to sue becomes an option that is not economically viable or satisfying when you're trying to feed and house yourself and your family. One would have to question whether we want to encourage ambulance chasing as well—I'm referring to the legal profession.

Ms Annamarie Castrilli (Downsview): Again.

Mr Wettlaufer: There's only one lawyer here.

Ms Castrilli: I feel decidedly outnumbered in the circumstances.

1000

Mr Bouliane: I have not mentioned the restrictions that apply to non-wage-earner claimants who are also affected by the decreased availability of benefits. This, I believe, has been mentioned by others; I think it was mentioned in the OFL's brief.

What this proposed legislation is all about, I believe, is reduced benefits and higher costs to the consumer, and reduced liability and higher profits for insurance companies—in short, a dream come true for the insurance companies. The insurance companies can't even agree that this package will guarantee rate stability. The insurance bureau has publicly stated that the rates will probably increase by up to 40% over the next five years, and I consider that really unacceptable up here.

In addition to all the faults that have been tabled, there are some that may not have been considered. The approximately six million licensed drivers in the province pay an average of \$880 per year for insurance coverage. Some simple arithmetic: This works out to about \$5.28 billion in premiums collected annually by the more than 150 companies engaged in delivering auto insurance. I wonder if anyone has tried to determine how much of the profits derived from these premiums go to finance industrial development offshore. Are we in fact financing our own employment and economic instability?

In 1993 it was estimated that about 11% of the premiums collected went to US-based companies while 17% of the premiums collected went to foreign-based insurance companies. That total of about 28% of the premiums collected by non-Canadian-based insurance companies accounts for roughly \$1.48 billion. Although a certain percentage of this, and indeed of all premiums collected by Canadian and non-Canadian insurance firms, must stay within the province to cover their liabilities, nothing, to my knowledge, would prevent an insurance company from investing part of its profit in offshore ventures or in stock-market-based funds that develop industries or enterprises which are in direct competition with Ontario-based industries. We may in fact be helping to create our own problems.

Another situation that comes to mind is the use of these potential investment dollars to finance operations within national or corporate jurisdictions which routinely are cited for human rights violations. An interesting fact to note is that the insurance companies themselves are exempted from the Human Rights Code. When assigning risk, they are allowed to discriminate by age, gender and area of residence. The point I'm trying to make is that giving the insurance industry what is effectively free rein is not going to guarantee it will act in the best interests of Ontarians.

With that, actually, my printer crapped out on me, so I will ad lib the rest.

What I'm concerned about is, are we shooting ourselves in the foot? If we examine what is available in Manitoba, British Columbia, Saskatchewan and Quebec, these four provinces have put together public automobile

insurance plans. They seem to be operating effectively, and the fact that insurance companies can operate in Ontario on a profitable basis indicates that we should be able to do the same thing with a public automobile insurance plan. Our expectations might be somewhat lower, but I think it can be done.

One of the things I didn't see in Mr Sampson's notes—something very near and dear to me and something I worked on in conjunction with the previous Minister of Finance—was the enabling clauses for group auto insurance. Have they been deleted from your proposed act? The reason we had these clauses inserted was so groups of people or organizations could provide a better service than was currently available to their members, to go out and form their own insurance corporations.

The present package, we feel, is unacceptable. It needs too much tinkering. It should go directly back to the drawing-board. Something has to be done with it. As I said, there are too many problems with it as such.

Mr Bruce Crozier (Essex South): Thank you, and good morning. Just so we're sure we're talking about the same things, you said this has a maximum of \$400. To get the term right, that's the minimum weekly benefit. You can, as you mentioned, buy up to a maximum of \$1,000. That's fine. I just wanted to make sure.

You also mentioned that there's the restoration of pain and suffering. That's already in the act. It was the previous government that removed the right to sue for economic loss, and it's being brought back. It's economic loss that's being brought back, not pain and suffering.

What it boils down to is that you're concerned about rates. I think that's part of why we're revisiting this legislation; it is, in the terms of the government, to stabilize rates. We've run into a bit of an interpretation problem when it comes to "stabilized" rates. Perhaps you could tell me, from your perspective and perhaps from a public perspective, what you're looking for with stabilized rates.

Mr Bouliane: I'm looking at rates that perhaps may increase but increase at the same level as the cost of living. What I've seen in the press leads me to believe that it's far in excess of what the cost of living would be. For northern Ontario, with the vast distances we have to cover, insurance for an automobile is an absolute necessity. We have very little access to public transport or anything like that which, if you chose not to use a vehicle, would otherwise be available in an urban area. We would like some stability. We would like to see something that you would know year to year; provided you weren't involved in some kind of situation that would require your rates to be increased, we would like to know what our rates would be on an annual basis, not guess them.

Ms Castrilli: I wonder if you could elaborate a little on the northern factor. I don't consider Sault Ste Marie the north; maybe the gateway to the north. You talked about the distances. You didn't talk about the weather conditions and the remoteness of some communities and how that impacts. Let me just ask a corollary question, and maybe you can deal with both of them. What would you see as appropriate benefits, given those considerations?

Mr Bouliane: For a lot of these communities, the remoteness is an absolute detriment to movement at all in the winter. One of the villages in Mr Wildman's riding, Dubreuilville, is at some points in the year virtually inaccessible. Public transport is basically not available, so people resort to using their own vehicles. Living in northern Ontario, I believe we have one of the higher rate classes, in this part of northern Ontario anyway, so it becomes a necessity.

If they want to do shopping—and I'm referring to going to a place like Wawa or Marathon or Thunder Bay or Timmins or the Sault—this requires that these people travel at least 140 and in some cases over 200 miles.

Ms Castrilli: We were told in Thunder Bay that the incidence of accidents in the north is quite a bit higher than elsewhere because of those conditions. Would you agree with that?

Mr Bouliane: I witnessed a rollover on the way to this hearing. Yes, I would say our road conditions tend to be a lot more harsh, a lot more unforgiving, and therefore perhaps some consideration should be made to the road conditions we have to endure.

1010

Ms Castrilli: What do you think the draft legislation should say with respect to the north? Not in specifics, but do you think there ought to be a section that says the north should be treated in some special way?

Mr Bouliane: Yes. I think some special consideration should be given to residents of northern Ontario specifically because of, as I mentioned, the inaccessibility of public transport, the road conditions. If you wanted to refer back to your maximum allowable loss of wage award, I think some consideration should be given to that too, because our cost of living up here—and Tony can bear this out and so can Bud—are far higher than living in southern Ontario. All you have to do is drive down the street and check out the gas prices. If you go to a place like Chapleau, it's 175 miles from Sudbury and roughly the same distance from here. We're paying a very high premium for living and working up here, so we think some consideration should be given to that.

Ms Castrilli: So equality requires different treatment in this particular case, is what you're saying?

Mr Bouliane: Absolutely, yes.

Mr Bud Wildman (Algoma): Ron, it is true that in northern Ontario we're one of the higher-rate areas, for a number of reasons that you've dealt with, the first being probably the distances driven. In my constituency, anything less than an hour's drive is a short drive. The distance from one end of my riding to the other is the same distance by road as it is from Sault Ste Marie to Toronto. The distances here are significant.

The other issue you've mentioned and that has been raised by my colleagues is weather conditions. Just the fact that we have winter conditions for a lot longer than most other parts of the province—and I can understand why the private insurance companies put us in a higher rate category, because the records show and the studies have demonstrated that there are more accidents in northern Ontario and that accidents tend to be more serious in this part of the province, involving more personal injury and death, partly because of the distances

to health institutions, hospitals as well. So there is a greater risk for the insurance industry.

But I'm interested in what you've said about rate stability. Are you suggesting that the industry should be held to a cost-of-living increase, on average, unless they can show they are experiencing significant losses province-wide or in particular geographic regions?

Mr Bouliane: That would be my thought, yes. I would like to see something like that addressed. For many of us who work in the private sector, involved with trade union organizations and such, we have clauses within our contracts that tie wages to cost-of-living increases. I'm not averse to an insurance company getting some extra, providing they can show they have actually incurred some significant loss in their earnings with regard to cost of living, or if they've run into some kind of financial difficulties.

Mr Wildman: If the government were to take that approach, would you see that as a province-wide average or would you do it on a geographic basis, taking into account the different risks in different parts of the province?

Mr Bouliane: If you were going to do it fairly, you would have to do it geographically, area by area; however, that would tend to put northern Ontario at a disadvantage, so you would have to average it out province-wide to arrive at a structure that might be viable for northern Ontario.

Mr Wildman: Just one other question for the committee, because I'm new to the committee. I read a press report in the Financial Post, I believe it was, which indicated that earnings for auto insurance and house insurance firms Canada-wide were up substantially; that is, there was, year over year, a 56% increase in profit last year. They indicated that the figures weren't available for Ontario, which I find rather odd. How could you come up with a Canada-wide average unless you included the one province that has 40% of the economy? Are those figures available to the committee and have you sought them from the industry? They must be available if you are going to be able to come up with a Canada-wide average.

Mr Rob Sampson (Mississauga West): Yes, we've asked for those data to be available and produced for Ontario. We don't have it yet.

Mr Wildman: Has the industry indicated when they would provide it to the committee and to the Legislature? Will it be available before the end of these hearings?

Mr Sampson: They have not given us a date by which it will be available.

Mr Wildman: Have they given a reason they haven't been able to give you the figures if the Canada-wide figures are available?

Mr Sampson: No, they haven't given us a reason.

Mr Wildman: I suspect it may have to do with timing. I wouldn't suggest that the committee is being held in the dark by the industry, but it seems rather odd that they can't give us the information we need.

Mr Tony Martin (Sault Ste Marie): I want to take this opportunity to thank everybody for coming to Sault Ste Marie and to welcome you to our wonderful city. I think it's important, when we look at legislation such as the package in front of us now, that you get out and

about and see just exactly what people are dealing with in their everyday life and how that contributes to some of the complication that often occurs re paying for insurance, getting coverage etc. Certainly, as the deputant has said, because we use our vehicles so much in the north for everyday work and getting around, it is a really important issue.

I also want to congratulate the parliamentary assistant on talking his government into actually taking a piece of legislation out to the public even before it is fully drafted into a real bill. That's different from anything you've done so far as a government re the consultation process and hearing from people and actually getting a sense of what complications might accrue. It seems to me so far in my reading of the discussion—because I haven't been with the committee—that you've been learning quite a bit, that it's been quite an eye-opener for you. I hope your stance in front of all this will continue to be as open as it has been.

I know that at one point you had suggested that if the insurance industry did not come into line, you might consider the possibility of moving to public auto. The deputant here this morning suggested that as something you might consider too. Mr Bouliane, is there anything you can share with the parliamentary assistant re at what point does all of this become unsustainable and at what point should he actually be seriously considering the possibility of public auto insurance?

Mr Bouliane: I haven't got an answer for that, but given the present rate increase and the number of companies involved in the sale of automobile insurance—the last time I talked with Brian Charlton, when he was minister, there were approximately 157 providers. When you have that number of companies vying for essentially the same pot, to maintain their economic viability, and not necessarily viability only but their profitability or whatever growth margin their owners would expect, you have to go back to the government and say, “Son of a gun, we have to increase our rates to meet our expectations.” At some point, you have to draw the line. You have to say, “This is no longer a concept that is saleable in northern Ontario”—and not just northern Ontario, all Ontario. What we need is something that is effective, fair and affordable, and I don't see anything in here that leads me to believe that this package would be. I'm glad that this is an ongoing process so that it can be tinkered with and perhaps made a little bit more fair or affordable.

As far as efficiency of delivery, if you have that number of companies involved in this type of situation, then just by the sheer number, it's inefficient. If you have the same number of people grabbing for some existing number of dollars—

The Chair: Thank you very much. If we could move to the government side.

1020

Mr Sampson: Thank you for your presentation. Thank you, Mr Martin, for the welcome to the Sault and for the opening comment about the process. I knew I was getting set up for something, though, when you brought that public auto question out. I dare say that, with our experience with workers' comp, the last thing we'll do is set up a public auto system.

I do want to bring the deputant's attention to a couple of items that are in the Insurance Bureau of Canada's report that actually had appended to it their summary of the cost of this product vis-à-vis the current system.

Mr Bouliane: I don't believe I have that one.

Mr Sampson: If you have a chance to take a look at it, you'll see a good driver of the rate increase going forward is something called medical rehabilitation expenses, which they are projecting year over year will go up 15% per annum as opposed to the 25% to 30% per annum now, although there are some companies that are effectively even in the existing 164 arrangement managing that number well below 15% and if you were to put those numbers in the actuarial equation you'll see rate projections very near cost-of-living increases going forward.

The second item I think I need to draw your attention to is that one of the fundamental costs of delivering a product such as auto insurance is called the loss cost, what you have to pay out on claims before management expenses and before that terrible word “profit.”

Mr Wildman: It's not terrible. At 56% it's pretty good.

Mr Sampson: The loss cost for this particular product is approximately \$120 to \$150 less than the current system. I would put to you that in any competitive environment where the cost of the product is reduced that dramatically, there should through competition be a benefit to Ontario drivers, a lot of which will be up here in northern Ontario.

Mr Bouliane: Normally I might say it sounds good, but after seeing what the industry had to say about rate stability themselves, I have to question that.

Mr Sampson: Right, but their comment on rate stability was they said medical rehabilitation expenses will trend at a 15% per annum increase year over year. My point to you is, there are some companies right now that are managing below that number.

Mrs Margaret Marland (Mississauga South): I too want to thank Tony Martin for his gracious welcome and his comments, but particularly his welcome.

I've been travelling on committees for 11 years, Mr Bouliane, and I've never heard a deputation open with the kind of comments that you opened your presentation with this morning. You referred to the situation in Manitoba, Saskatchewan, Quebec and British Columbia in terms of government-run automobile insurance. I wonder if you'd like to tell this committee what the rate comparison is in those provinces compared to—if you wish to comment on the last 10 years under two different governments and now a third government, the rate comparison in Ontario.

Mr Bouliane: I can tell you from personal experience, and this was after the previous government had rescinded their commitment to public automobile insurance, I called an insurance agency out in south Winnipeg to get a comparable coverage for my car. I explained to him why I was doing it, and at that time for both the vehicles I told him that I had—years, models, number of miles driven—he quoted me a price that was, if I remember correctly, about \$450 lower than what my existing premium was in Ontario. That was from Winnipeg.

I also called a BC Autopac office out in Vancouver. Their rates were slightly higher but they were still approximately \$200 less than what I was currently paying at that time. Now this goes back to about 1991. What changes there have been out there to this point, I don't know. Their rates, like everyone else's, have probably gone up, but how they are in respect to our rates I couldn't tell you at this point.

Mrs Marland: Did you get the rates for Quebec?

Mr Bouliane: No, I didn't call Quebec.

Mrs Marland: Or Saskatchewan?

Mr Bouliane: No, I just called Manitoba and British Columbia. I checked with Manitoba because they were the more recent entry into the public automobile insurance field, and I had experience with BC when my brother was stationed out there with the armed forces. We compared rates in years previous to that and his rates were always substantially lower than mine.

Mrs Marland: So your research into the matter of government automobile insurance involves two telephone calls, one referring to a situation in 1991 in British Columbia.

Mr Bouliane: Essentially, yes. Given that they had the information I provided them with, I felt that was a fair comparison. Whether their costs are partly subsidized by topping up by the government is another thing, and that I would not agree with. But I do think we can provide public automobile insurance here at a reasonable cost and not at a cost to the motoring public.

Mrs Marland: Could I ask you another question, because I don't wish to debate you about the fact that you quoted four provinces and you have information only on two of those. The other question I have for you is, why do you think that the previous government in Ontario, which campaigned on public automobile insurance, did not implement it in five years?

Mr Bouliane: In my conversations with the minister, he mentioned two reasons: One, he was afraid that the implementation would cause a drastic job loss within the greater Metro area. He quoted somewhere in the order of 13,000 possible jobs being lost.

Mrs Marland: Did he say how?

Mr Bouliane: No, he did not say how at that time. I think what he was referring to—and I can only assume he was referring to that—was if we went to a public automobile insurance plan, private carriers would have to either decrease their size levels or they would halve their staffing or they would have to shut down.

The other thing he mentioned was the threat of a suit under the free trade agreement. It wasn't the NAFTA at that point, it was the FTA. The implied threat was that if that government proceeded with publicly funded automobile insurance, then American-based companies could seek legal remedy under the free trade agreement. I believe the legal remedies would have permitted them to claim five years forward from the time of implementation and I believe with the legal fees and the cost to the government it was a very considerable sum they were talking about, in the billions of dollars.

The Chair: I would like to thank the Sault Ste Marie and District Labour Council for their presentation this morning. Thank you for coming.

Mr Bouliane: Thank you. We enjoyed having you here. It's kind of a novelty. For Mr Spina it's kind of a return to home turf I guess. This thing, coming to outlying areas to have committee meetings, can only be a benefit to the process.

1030

TRACEY ROETMAN

The Chair: We now welcome Tracey Roetman. We have 20 minutes together, more or less, and we're pleased to be hearing your presentation. Then perhaps we could fill any time remaining with questions.

Ms Tracey Roetman: Thank you for letting me be here. I have never spoken in front of a speaker before. The reason I chose to come and speak is because I've been and my family has been affected by an automobile accident. Actually, I didn't even know I was coming until Friday and I didn't receive a copy of the summary draft up until Sunday.

I'm 35 years old. I have four kids and a husband. This accident I've been in has affected my life and the lives of all the people around me. I'm thankful for this opportunity to contribute in what I hope is an informative point of view. I didn't even watch this on TV beforehand, so I'm not totally sure what the process is. Often in my journey through this I've been frustrated by the fact that I am a claim number and not a person. This gives me an opportunity not only to be a person but to speak for people and hopefully make a difference.

In the past 10 years the insurance law has been changed several times. Change is good and I believe it's necessary, and I'm impressed with this process. I think it's great that people get an opportunity to speak and to be heard. I often think that the insurance laws are made up by lawyers and insurance companies. If they're not made up by lawyers and insurance companies, they're greatly influenced by them.

In 1992 I was very naïve. I would love to remain innocent. I'm no longer innocent and I'm no longer naïve. I am told that my case is an exception and I don't believe it. What I've been through was a nightmare and what my family has been through has just been awful. I have also been entrusted to speak for a countless number of other people who can't speak for themselves. I've met these people in doctors' offices. I've met them in group meetings. They're trying to put their lives back together. They don't know where to turn, and all they want to know is where they can go to get well. You don't get an opportunity to see this side of it.

I'm all for punishing fraudulent claims, but I think the numbers we hear on fraudulent claims are nonsense. In the four years that I've been dealing with this I've only seen one person I would consider fraudulent. The media and the insurance industry has made that whole issue bigger than it is. To go through what you go through, it would take an incredibly stupid person to bring this on themselves.

My husband told me once when I was at a job and I was frustrated with some of the personnel on the job that in life there's a 5% moron ratio—those aren't exactly the words he used—and in most of life I have run into this 5%. It's usually not more than 5%, and I don't believe in

this that it's a higher per cent than 5%. I know the money the insurance companies spend on checking out the truth will probably not change however you decide to change the insurance legislation, and I know that in most cases the truth will come out. There'll be a neighbour who wants to tell the truth; there'll be a family member who sees the truth and wants to tell it, and then the dollars they spend on investigating these things—it'll just come out if there's a fraudulent case, and I'm all for it. I think the fraudulent cases should be prosecuted to the maximum.

My life before the accident: I was an active mother. I went camping with my kids. I was involved in parent groups. I was on boards of directors. I did sports with my kids. I went to school meetings. I did volunteer work at the school a couple of days a week. My house was always full of kids and people. As a friend, I had dinner parties. We went dancing. I was always organizing stuff. As a wife, I worked with my husband in his business. He had a construction business. Our life was pretty much the all-American life.

As a homemaker, I probably did what most women do. I did everything from split wood to pour cement in the garage; when they'd come to do the garage, I got involved in that. I was a great cook. I did what women do. I did painting. I did wallpapering. As a neighbour and citizen, I canvassed for Alzheimer's and the cancer society. I've got a senior who lives next door to me; I cut his grass. On the other side there's a guy who isn't there much; I cut his grass.

My life now: Right now, I'm over my limit; I'm allowed to be up 20 minutes a day. The reason I came and agreed to speak here is because I think what I have to say needs to be said. At 8 am a Red Cross worker comes in and she gets me out of bed and she takes me to a shower, which is a big plus because for three years now they've been doing bed baths. At 9 am a homemaker arrives and spends the next three hours taking care of my house. At 12 noon the Red Cross attendant comes back and gets me back into the bathroom and puts me back to bed and makes me something for lunch. At 3:30 she comes and, if I'm up to it at all, she lifts me into the whirlpool and I get some physiotherapy. At 4:30 my kids come home and all the energy I have left of the day goes from getting from 4:30 to 8:30, when they go to bed.

You can tell I'm emotional about it. At 8:30, when my two younger ones go to bed, my daughter or my husband gets me into the bathroom. I do my toiletry, and that's it, I'm done. I spend my life in my bed.

My first problem—and I've only had a day to look at this—is with the word "catastrophic." I don't know what "catastrophic" means. Webster's dictionary defines it as complete destruction. I need to know what's meant by "catastrophic" and I'd really like to know who came up with this word. It's irresponsible to leave this word undefined. It would affect the lives of thousands of Canadians.

Easter Seals defines "handicap" as everything that affects mobility, usually neurological malfunction. Group health defines it as not being able to do normal duties or occupation. The March of Dimes defines it as your life is hindered to a disadvantage by a mental or physical problem which hinders life tasks. Disability allowance

leaves it up to the individual's physicians to assess and define. The general hospital defines it as a restriction or lack, resolving from impairment, of ability to perform activity in a manner where the range is considered normal for a human being.

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To qualify for long-term care, you need to be able to turn in bed, position or transfer. You need assistance in bathing, showering, shaving, personal grooming, dressing and undressing. You need assistance in using the toilet, assistance in breathing, assistance in eating, assistance in meal preparation, dish washing or household tasks, assistance in essential communication.

As we can see from the above definitions, "catastrophic" needs to be defined. The reason I know this information is because I have to deal directly with these organizations. I fall under different legislation. I fall under legislation where if it's deemed medical, they are supposed to pay up front and fight later. The "they" is the insurance industry. It is very unfair that the government of Ontario is paying for my health care, especially when the law states otherwise. Even when it is in black and white, my insurer refuses to obey the law. You need to be very clear in defining "catastrophic." From what I understand, I wouldn't be considered catastrophic.

The next problem I have is with the \$75,000 basic benefits. I don't think you have any idea how fast \$75,000 can be eaten up. It cost \$10,000 each time they flew me to Toronto by air ambulance; that was four trips. It cost \$7,000 for my hospital bed, \$350 for my walker, \$2,500 for my wheelchair, \$4,500 for my power chair, \$7,000 for a lift, \$20,000 for a bathroom, \$5,000 for a ramp, and the list just goes on and on and on. We haven't touched nursing care, which is \$33 an hour. We haven't touched the \$3,000 it costs me to be in the hospital in Toronto. I don't think you understand how expensive this can be.

The other thing that I would like to say at this point is that I fall under the legislation where they were supposed to pay now and fight later. They haven't paid for this stuff. We've had to borrow money and beg for health care. You really need to be careful when you're defining this. The other question I have, which will lead me into the next, is, does that \$75,000 include DAC and does it include rehabilitation? Because if it does, they can eat up \$75,000 like nothing.

DAC and rehabilitation consultant: What I want to say is, wake up and smell the coffee. I'm not here to offend anybody. I don't think we need them. If they want to save money in the insurance company, they can be eliminated. They're not impartial. Ten years ago you didn't hear of them. Where did they come from and who pays them?

Can I think of a better idea? Yes, I can think of a lot of better ideas. The Ontario compensation board could be doing these assessments. The VON nurses, who have a high rate of compensation cases and they don't know what to do with their nurses, could be going in and doing these assessments. They would be independent. The same money, if you're going to pay \$7,000 for an assessment by a DAC or by a doctor in Toronto, could be used and given to the compensation board. The same money that they're spending for rehabilitation people to come in and

supposedly give an unbiased opinion, you could take the nurses from the VON and they could be making these assessments, and fairly, and we would be giving them money.

The other suggestion I have is that the mediator, who you have to go to lots, can make some of these decisions. If the insurance company and the health caregivers of the insured gave seven names to the mediator, and you want an independent medical, it could be done that way. It could be done through a mediator, where they pay \$7,000. I don't have \$7,000 to come up with for another independent medical. And it's not non-biased.

All my health caregivers who are being paid nothing can have all their opinions, and all of a sudden they don't mean anything, the people who have to take care of me. These people who do these medicals, they never have another thing to do with you. They're not there to see you through when you have a problem with what's going on. You can't go back to them and say, "Hey, this isn't working."

I don't think OHIP should be paying for my doctors' visits, my home care, my air ambulance trips to Toronto, my chair. I don't think OHIP should be paying for—it's just so much—my VON. I think this should fall back on the insurer; I don't think it's fair that the Ontario taxpayer has to pay for it.

The other problem that I have, that I've read through, is the level of benefits. When it was typed up it was 85% and they put "of gross." I thought, "That's a typo," but it's not a typo; 85% of gross is not fair. In my case, what if I stayed home with my kids, what if I work for my husband, like I did? How can you come up with this 85%? What if I was in the process of going back to school or if I was in university? What if I just started out in business? You can't tell me that I wouldn't have gone to the top in five years. You can't tell me that my business wouldn't have doubled in five years. I don't think it's a responsible call to say 85% of the gross. We need to consider economic advantage and competitive advantage.

Because my husband was in business, I can think of a lot of other businesses where it's just the family running it, where wives put in hours. If the main person in that business—and in my case I was the back; when I went, the business dissolved. But in other businesses that I know of, and I know lots of them—I can think of a plumbing group, I can think of another guy who was doing construction. If he's in a car accident, his business no longer is. In 15 years my husband never had to advertise after the first year because everything came from word of mouth. You can't say where we would be at in another 15 years. At that time we were able to take care of ourselves. I could afford the clothes that I'm wearing, which I now can't. Now I'm dependent on a disability pension, which is glorified welfare. The Ontario taxpayers are taking care of me, and I don't think this 85% is fair.

Non-economic loss and pain and suffering: I looked at that and my suggestion is, if somebody is injured \$20,000 worth, which I don't know what that is—they get migraine headaches, they can't think—I think they should be awarded the \$5,000 and I think the \$15,000 they cannot claim should go either into OHIP or the injured

head association, donated to local schools. I think there's a better way of doing that and I don't think the person who was injured would feel bad knowing that that \$15,000 went to something positive.

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My closing: I've heard it said that the insurance companies want to be called the gatekeepers, that if we just trust them, they'll take care of everything. I'm really trying not to be cynical, but this would be a serious error. They can't be trusted to take care of everything. We can't leave things in their hands. The Ontario citizens deserve better.

In my case, it's been four years and it's still ongoing. I'm hoping there will be some justice at the end of this. I'm hoping that by talking about making new laws for the insurance industry, people listen and really look at it. The person who spoke before me: I don't know all the ins and outs of it, but I don't think that government-run insurance is a bad idea. If you people had any idea what it's like to go up against these people, it would be a whole lot easier to just have it cut and dried, because they're going to argue every angle of it, every word. They want to know about my births when I had my kids. You just really don't have any idea and it really needs some consideration. If you have any questions, I can probably tell you lots.

The Chair: Thank you very much for your very passionate presentation. It means a great deal to us.

Mr Wildman: Ms Roetman, on behalf of the committee, I thank you very much for coming and making this presentation. We certainly felt the emotion with which you presented your views and your experience.

I want to ask one specific question in relation to your presentation, and that is on the disability assessment consultants. Could you give us some idea of the experience you've had with these consultants, how often you've been assessed, who appointed the consultants and what the results were of the examinations and discussions you've had with the consultants.

Ms Roetman: Oh, I'm really glad you asked that question. They can send you for a consultant—if I lose track, you'll have to get me back on—and they can send you as often as they deem necessary. It can be every couple of months, it can be every other week; as long as they feel it's necessary, they can send you for a consultant. The rest of the question was?

Mr Wildman: How often you've actually been assessed.

Ms Roetman: I've been for at least 20 of them. The last two I had, the people they sent me to to do the consulting, said: "You're killing this lady. Don't send her for any more. We don't see any need." You know what? They want me to do more.

Mr Wildman: When you say "they," was it your physicians who said that?

Ms Roetman: No. My physicians fought it tooth and nail, but I figured the best thing to do would be what was right. My personal physicians didn't think it was a good idea or would serve any purpose or would contribute any more to my case. If you don't go for these, you're considered non-cooperative. They can do as many as they see right—I'm sorry, but I'm going to go into the last one. I wasn't going to do this.

I've been on bed rest for over a year, and they told me for at least another year before I could do anything. The last time they decided to send me for an assessment, they wrote me a letter and said, "You have to go for an assessment." They wanted me to bring running shoes and sweatpants. I'm on bed rest. It's just outrageous. They also state that you can't bring a tape recorder, you can't bring video cameras, and I couldn't bring a caregiver.

They were going to come and get me by air ambulance at my house with a nurse and take me to Toronto and do these assessments for three days, which all of my caregivers, doctors, nurses said was just outrageous, and fly me back by air ambulance and put me in the bed. I had said: "I will be cooperative if you let me take my nurse with me. I will go for this. I think it's outrageous. I think it's going to set me back. I think some of the things you're asking me to do are right off the wall. If you had read any of what the doctor's report said, you'd know that I'm not capable of this, but I will do this to be cooperative."

My doctors sent letters, my therapist sent letters, everybody sent letters to these people and they didn't respond. This was three weeks beforehand. Three days beforehand, I said, "You know, I can't live like this." There was no response. It was quiet. I had called my lawyer and I said would you send them a fax and say if they can't send my caregiver with me, I will not go. Never heard nothing.

The day I was supposed to go, an ambulance pulled into my drive, came into my house and said, "We're here to take Mrs Roetman to Toronto." My husband and my kids were there, they were upset. My husband called the lady in Toronto and said, "Did you not get any of the doctors' letters?" They said, "We don't have to reply to that." He said, "Did you not get the lawyer's letter?" "We don't have to respond to that; if your wife is not on that air ambulance I want a cheque from you tomorrow for \$10,000." My nurse wasn't even around. My kids were hysterical. I couldn't even talk. My homemaker was just sobbing. Next, air ambulance arrives at my house: "We're here to take Mrs Roetman to Toronto."

My husband—they deem my husband as non-cooperative and maybe a little bit crazy, but from all he's been through that could be true—argued with these people for an hour that they couldn't do this, that you just can't come in and take me, that you wouldn't send a kid to Toronto without a caregiver. At one point they had even hired her to go with me but changed their mind. You really don't have any idea of what goes on.

Mr Wildman: So did you eventually go?

Ms Roetman: I said I would go to Toronto—they sent another letter—if they could send my caregiver with me. I have never heard a response.

Mr Wildman: But they say they don't need to respond.

Ms Roetman: Yes, I know.

Mrs Marland: Tracey, on your effort, your physical and psychological effort to be here today, we cannot express adequately our appreciation for the fact that you have done this. I'm sitting here frankly wanting you to put on the record the name of your insurance company, but I suppose, as a legislator, it mightn't be—

Ms Roetman: I'll tell you this, they're the richest insurance company in Canada and they have a commercial on right now about a snake, where you can trust these people, you're in their hands, they're the "good hands" people. They also have a new TV show—

Mr Crozier: Traders.

Ms Roetman: Traders, that's it, which seems to be very appropriate.

If you really want to know, I'll tell you.

Mrs Marland: I'm not asking you, but if you feel you want to tell us, it's up to you.

Mr Joseph Spina (Brampton North): We know who it is.

Mrs Marland: Apparently we do know who it is. We spent all last week in Toronto, and I think the thing that upsets me—up to now the thing that has upset me about what's going on in automobile insurance in Ontario has been the fact that my constituents, and you know this through your own families, are complaining about the insurance rates, the money side of it.

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But what I've learned in the last week and again yesterday is that, on the human side, it's devastating how the staff who work for these companies obviously have no training in how to deal with people in a humane way. One of the things that came out time and time again last week in Toronto was simply three words: "We aren't believed." In some of those cases, they were talking about head injuries, which are difficult for an untrained person to see. So you'd have to question why untrained people are involved. In your case, you've got so many manifestations of the results of your accident that I think that you're marvellous in terms of you must be very strong and very capable to still be able to cope.

Ms Roetman: It's the grace of God. That's all it is, the grace of God, because it is way beyond me.

Mrs Marland: Thank goodness you have that. Is there anything you could tell us—is it that these people have to be better trained? What message can we take to the insurance industry?

Ms Roetman: There are a few things. One, I don't know if it's better training, because I know of a person who was at one of their meetings; it was put on by the insurance company but there were physical therapists there and there was a bunch of people. The insurance company, the mentality you're dealing with, you see one side of it. The insurance company was there, and they were talking about the DAC. They literally sat there and they quoted, "DAC is my friend, because we pay for them and they say what we want."

I think there's a little bit of naïveté in that you need to involve outside parties. That's why I suggested VON. I think 90% of the people that have minor injuries, if you give them one year without being involved with the insurance company and made a law, the majority of them would get better. They wouldn't be bombarded two days after with phone calls, with people showing up at their house with assessments. If you left them alone for one year, I think the majority of them would get better, if you made that restriction.

As for the assessments, I think you need to say there can only be two a year or one a year. Compensation:

How many do they have? I know somebody who is on compensation and it's been twice in eight years. There have to be limitations. You need to involve people who are not getting paid for it—not directly anyway; whether it goes to OHIP and then it gets paid back—who are independent and can make these assessments. Until you separate that—if my friend here who is a nurse is going to assess somebody and she's not getting paid by the insurance company—that does taint things. These people do feel like they're not being heard.

Mr Sampson: I thank you for coming today. I would suggest that you forward the comments you've given us here with respect to your history—maybe you can get an extract from Hansard—to the market contact section of the Ontario Insurance Commission, where you can mention the insurance company's name, and ask them to inquire into that practice, because that's what they're set up to do, to deal with those items. They record those and then they deal with them. They deal with items where it's either apparent or implied that there is some practice that's not appropriate. I think it would be worthwhile for you to do that, to make that mentioned.

Ms Roetman: I've sent them a letter. I haven't got a response yet.

Mr Sampson: When did you send the letter?

Ms Roetman: It went out in the last couple of weeks.

The Chair: We'll make sure you get a copy of Hansard for this presentation.

Mr Crozier: Tracey, if you're comfortable with it, what was the nature of the accident and the extent of your injury?

Ms Roetman: I have no problem with it. When you've been bed-bathed for two years with people coming and going, you can ask me whatever you want.

The nature of my accident? I was picking up my kids from swimming. I had four kids and my sister in my car. I had stopped to make a left-hand turn and I was waiting for traffic to clear. A lady in a Cadillac, who was talking to her kids and had to be speeding, hit our car from behind, my car, a big car—I was in an LTD; it wasn't a little car—and drove the car 70 feet forward and broke the seat I was in right off the hinges.

I have nerve damage to my left leg; it's non-functional. I have a lot of lower-back pain. I do have muscle spasms in my body, and since we're not in court I can use the word "fibromyalgia." Some people don't like that word, but basically it means muscle spasms.

Mr Wildman: You ache all over.

Ms Roetman: Oh, I'm in constant pain. The nerve damage to my leg and my lower back is just—you can't comprehend it.

Ms Castrilli: Mrs Roetman, thank you for coming in. I think all of us here are very moved by your story. You've painted a very poignant picture of what it's like to be at the other end in this issue. I'd like to touch for a minute on the issue of catastrophic. We've had a number of deputations come to us and say what should or shouldn't be catastrophic and how it should be handled, and I wonder from a victim's perspective what you think is catastrophic and what should be the consequences.

Ms Roetman: I know of a nurse who had a head injury. She works with the group health here. She has to take a phone with her, because she can't find her appoint-

ments. She literally has to call and say, "Where am I going and what am I doing?" because she can't remember that. Her memory has been affected. To her, that's catastrophic. The fact that I can't get out of my bed and be a productive wife or mother, to me, that's catastrophic. There are just so many. If you were a brain surgeon and you could still be a doctor but couldn't do brain surgery, that would be catastrophic.

If you don't define it, I think you should leave it up to one or several physicians to define, because what's going to happen is the Ontario government is going to end up paying again, for disability pensions, for—they have no problem with defining "handicapped" or "immobility." We literally have to put it in black and white, because I think the gatekeepers are going to have a ball with it, unless it's really defined clearly.

Ms Castrilli: Who would determine that?

Ms Roetman: Like I said, this overwhelms me too, because the Ontario government will trust my physicians to assess it but the insurance company won't. But if you're not going to trust them to say, pick four physicians to decide.

Ms Castrilli: Four physicians?

Ms Roetman: Well, you have to get four different opinions that decide whether this is catastrophic or not.

Ms Castrilli: And you'd be comfortable with that?

Ms Roetman: I would be comfortable with that.

Ms Castrilli: It certainly sounds to me, from the kind of day you have and the way your productive life has been curtailed, you're pretty close to catastrophic.

Ms Roetman: Yes, but would my insurance company fight that?

The Chair: Thank you very much. We've gone well over time on this presentation, but this speaks of the seriousness of it.

Mr Wildman: Chair, I don't want to prolong it, but you are receiving a provincial disability pension?

Ms Roetman: I think it's by the city. It's glorified welfare. I don't know what it is.

Mr Wildman: In other words, you're getting social assistance?

Ms Roetman: Yes.

Mr Wildman: Okay.

Ms Roetman: But it's deemed a disability.

Mr Wildman: And they took your physician's assessment of your condition to determine whether or not you qualify?

Ms Roetman: Yes. But the same four, March of Dimes, VON, all that stuff.

The Chair: Thank you, Tracey, for coming in today.

Ms Roetman: Thank you. I hope that this makes a difference.

The Chair: It certainly does.

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SAULT AND DISTRICT SOCIAL JUSTICE COALITION

The Chair: We now welcome the Sault and District Social Justice Coalition, Gail Broad. Welcome

Ms Gail Broad: Okay. I'm going to be brief and I'm not going to stick completely to the written notes. I'll try to make my presentation a bit shorter than the written

notes, but I think the written copy has been distributed to everyone, so you'll have that to refer to later.

In the comments that I'm going to make, I'll make reference to just a couple of statistics. If you are interested in pursuing the source or taking a look at the information, basically, most of the information that I will be mentioning about northern Ontario comes from the district health council study, which was conducted by Ernst and Young in 1993, I believe, for a health systems review. It's basically just a summary of the demographics of Algoma district.

I just want to begin by telling you the Sault and District Social Justice Coalition is part of the Ontario Social Justice Coalition network. We belong to that and we also belong to the National Anti-Poverty Organization, NAPO. We are composed of approximately 125 people locally from both Sault Ste Marie proper and the Algoma district, and we represent a fairly wide range of individuals. Some of us have interests in church organizations or labour organizations. Approximately 50% of the coalition are themselves low-income people and thus have a strong interest in social justice.

I'd like to address first of all some conditions in northern Ontario which I think make auto insurance a particularly important factor in the lives of many of us who have chosen to live in the north.

Northern Ontario is a fairly sparsely populated area, with some urban centres, such as Sault Ste Marie. Unfortunately, this committee is only in Sault Ste Marie. I think it would be very helpful if you spent some time outside of Sault Ste Marie travelling to some very small towns and villages to see what it is like to live in northern Ontario for most of us.

Most of us do not have access to any form of public transportation whatsoever. Most of us do not live on Greyhound routes or any other means of travel, and therefore cars are particularly important to us. It is our only way of accessing medical services, social services, grocery stores and every other type of shopping that we need to do. So in fact, for us, cars are essential. They aren't a luxury item, as they might be in a larger urban centre. Therefore, the effects of a car accident have dramatic implications for a family, as Mrs Roetman mentioned earlier, not only in terms of their ability to continue on with their day-to-day life but also in terms of their ability just to travel to medical appointments and the costs of travelling to medical appointments and the costs of participating in the kinds of assessments that are currently required.

The other thing about northern Ontario that I think it's very important for you to recognize is the types of employment that are available to people in northern Ontario. Northern Ontario is primarily based on primary industry. Logging, some tourism and mining are the main industries in northern Ontario, and therefore the ability to perform heavy labouring type of duties is a very important part of living in the north and the inability to participate in the construction or logging or mining industry means a very reduced income for people.

If you look at northern Ontario, in the demographics of northern Ontario you will discover that we have a much higher rate of injuries than southern Ontario, accident

injuries, not only car accidents but also work-related injuries, and much lower educational levels, and of course our employment, as I stated earlier, is much more in the primary industries, where an inability to work at a heavy labouring job often means an inability to find any type of employment and an obligation to depend on social assistance for income. Because of I guess the demographics of northern Ontario, it's therefore, as I said earlier, very important that people be able to have a car, operate a car and participate in the workforce in that way.

Although our presentation is very brief, I'm sure that you're hearing from lots of other people. Our presentation is only going to address two or three of the changes that are being proposed.

The first one is the benefit rate reduction. Again, if you look at the kind of employment that many people in the north have, the benefit rate reduction is a vital concern to people in the north.

People in the north tend to be employed in seasonal employment very often. Logging is seasonal employment, as is the construction industry, as is the tourist industry. Therefore, people in northern Ontario may have very high income levels for a short period of time throughout the year. If you're logging, it is not at all unusual to earn \$4,000 a month or \$5,000 a month, but you might only earn that for five months out of the year. While you're earning it, it seems like you've got a lot of money coming in, but it's for a very brief period of time. Most people who work in the logging industry also have some other types of part-time work in the summertime, or they may have small farms to help subsidize that income. However, their primary income comes from a very short period of employment.

Also, most people employed within the logging industry do not qualify for something like unemployment insurance benefits, as an example, because they are self-employed within that industry.

Therefore, the proposed reduction, and the cap that is being proposed on income, is going to have severe effects on that group of people. If you're earning \$1,000 a week every week of the year, that's one thing. However, if you are earning \$1,000 a week for four months out of the year, that obviously has a very significant impact, and the reduction of it will be very significant for that group of people.

The rate reduction from 90% to 85% is another major issue for people in the north, again for many of the same reasons. If you look at the wages in northern Ontario, you find that more people work part-time or work at low incomes than the rest of the province. So, again, reducing it by another 5% is going to have severe consequences for many people. As again was clearly articulated by the person presenting before me, the increased costs to a family of transporting an injured member from outside an urban centre in for doctors' appointments, having the increased cost of care and so on, does not allow people the luxury of accommodating a further 5% reduction in benefits, particularly since this doesn't seem to be going to result in any reduction in insurance premiums. If there was going to be a significant reduction in costs for people for insurance, it might be offset, but there certainly doesn't seem to be any appearance at the moment that this will happen.

The final item that I wanted to bring to your attention, and I think this was reflected very poignantly by the previous speaker, is based on fraudulent claims. According to the summary of the changes, there is to be an increased diligence in prosecuting fraudulent claims. Now, on the basis of this, most of us would say: "Well, this is as it should be. We want to eliminate fraud." However, many of the things that the previous speaker has gone through are simply because the insurance company does not believe she is as injured as she obviously is. According to the insurance company, they are trying to eliminate fraud by being very diligent in their assessment process of the victims. However, you can see the results of that on the victim of accidents. It is financially damaging. It is incredibly emotionally damaging for the individual and for their families.

In my work outside of the social justice coalition, I've had an opportunity to be involved with a number of people who have been investigated for fraudulent claims, not with regard to insurance but with regard to other issues, and these investigations are incredibly intrusive into the person's life. They examine all kinds of things that are obviously not related to the injury for which compensation is being claimed. One of the comments that the previous speaker mentioned was how they wanted to know the details of the birth of her children. Now, what relevance does that possibly have to the claim she has made for benefits resulting from her car accident? Obviously nothing, and yet all of a sudden these become important issues.

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The people who are doing the assessments have no relationship to the victim. They have not examined her on a day-to-day basis. Frequently, individuals I have been in contact with in the past are sent to Sudbury for an assessment, which is approximately a three-and-a-half-hour drive from Sault Ste Marie. If you are a back-injured or a neck-injured person, travelling that distance in a car is very uncomfortable, to say the least. The appointments are frequently made at 9 o'clock in the morning, therefore the person has to take care of his accommodations overnight. Sometimes they are reimbursed for these things weeks or months after the assessment has taken place. People do not necessarily have an extra \$500 or so to make a trip to Sudbury and stay in a hotel overnight and pay for their food and their child care and so on, and perhaps have to take an attendant or a family member with them to help them during the course of this for a two-hour assessment, where they look at X-rays that have already been looked at by three specialists and make a pronouncement on whether the person is disabled or not or the extent of their disablement.

The assessments are at the very least suspect, and I think at the worst are incredibly damaging to people's lives. Often what happens in the process is that you go along with whatever assessment it is because if you don't, you are considered to be non-cooperative, and if you don't cooperate, your benefits are cancelled. Eventually, they might be restored—sometimes two years down the road benefits are restored—but in the meantime, how do you survive?

Those are the issues that the social justice coalition wants to present before the committee today. If you have

any questions, I'll be happy to answer them. Thank you for the opportunity to be here.

Mr Spina: Gail, thanks for the presentation. Looking at the comments you've made in your presentation regarding the caps, I can understand your concern in that regard. We're trying to grapple with two issues here. One is we have a number of innocent victims, like Tracey Roetman who has been severely injured. Under Bill 164 she's entitled to sue for pain and suffering, perhaps, but that's the extent of it. Under the proposals now we're trying to reintroduce some tort where not only could she sue for pain and suffering but also some other loss of income or income replacement to a certain degree.

The thing that we're grappling with is that higher costs to the insurance company with larger claims could potentially drive premiums up. On the other hand, we want to be concerned and essentially I guess have some social justice for the victims where they are able to get compensation for more than just pain and suffering.

I'm trying to understand, I correct in assuming that you're more or less in support of the additional recourse that the victim would have as a social justice concept?

Ms Broad: I think if you take a look at insurance claims, there are two things that happen under a tort system. One is that a great deal of the dollars allocated wind up being allocated towards lawyers, and some of my friends in the law profession wouldn't thank me for saying that, but I think that the presentation made by ARCH, if I recall correctly, pointed out the exact dollar figures. I think it was something like \$400 million from the insurance companies and \$300 million from the accident victim; that was the ratio of the way that it's divided up.

Out of that, I think you'll find that the percentage that goes to victims from a tort system is quite small. There are a number of changes that need to be made to the current status in order to improve money flowing to victims, but I don't think that reintroducing the tort system is necessarily the way to go.

Ms Castrilli: Thank you very much for coming here. If I could just clarify, the point that ARCH made before us was that those figures of \$400 million and \$300 million were pre-1989, so prior to the insurance systems that have been brought in. I don't think there is a tally of the exact figures, and you should probably know that the Canadian Bar Association has taken the position that if contingency fees come in, for instance, that won't have any kind of impact on rates.

I want to focus on a couple of things that you said. Your second point is that there is a rate reduction from 90% to 85% of gross earnings. In fact, that's being proposed as 85% of net earnings. That is a change.

Ms Broad: So it's from 90% of gross to 85% of net?

Ms Castrilli: That's right.

Ms Broad: So it's even less.

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Ms Castrilli: That is to a maximum figure of \$400 a week. That may change your views or it may not, but I wondered whether you were aware that the insurance companies that appeared before us said that for those decreased benefits that we will be having under the proposed legislation, they in fact expect to charge higher

rates, something in the nature of anywhere from 7% to 8% to as much as 12% a year over the next four or five years. I wondered if you might comment on what you think that will do for people in the north when you're paying higher rates and you have lower benefits.

Ms Broad: That was the point I was trying to make earlier. Because many people in northern Ontario do have high earning rates for a short part of the year, for a portion of the year, by capping those to \$400 a week, that's going to mean they will not have that money they would normally have to help subsidize them for the remainder of the year. Additionally, if it's 85% of net earnings as opposed to 85% of gross earnings, then it's going to obviously be even less income coming in, so it's going to make it only more difficult, not easier.

The other issue with regard to the increase in insurance rates—already in my workplace I have seen a number of people, particularly people who had been employed in jobs such as taxi driving, delivery, services, that kind of thing, who are unable to pay the cost of insurance in order to keep that job. A 12% increase is going to mean that more people who are at the bottom end—obviously, driving delivery is an entry-level position in most places. They make minimum wage. If you increase insurance costs, it's only going to make it more difficult for them, if not impossible, to keep that job.

Ms Castrilli: Do you think people in general will accept those increases?

The Vice-Chair (Mr Tim Hudak): To the third party.

Ms Castrilli: You can answer it there.

Mr Martin: I just want to thank you, as everybody else has said, for coming forward today. I think it's important that people like yourself and Tracey come before this committee because there's a lot of educating that needs to be done around the whole question of insurance and who it works for and who it doesn't.

The story that Tracey told earlier is one I've heard a number of times in my office over the last six years as people who have become so frustrated with trying to work their way through a system that's supposed to be working for them, if they get hurt in an accident, and in fact doesn't.

You're spelling out some of the concerns of those who are at the lower end of the income scale in this community, and I'm sure across the province, and the difficulty they're having now with a system that's supposed to be simpler and more straightforward. To introduce a newer system that will put greater pressure on victims to prove that they are in fact hurt as much as they are and to get the benefits they need in order to keep body and soul together as they get better and get back into the workforce and become gainfully involved again is something that I'm hoping Mr Sampson and his colleagues are listening to very loudly and clearly.

Certainly, tort and the need to involve oneself with lawyers in order to achieve some justice is one that those who are at the lower end of the income scale have a very difficult time accessing unless they have access to a legal clinic or to legal aid, which is now under review by this government.

Tracey Roetman mentioned needing a lawyer to help her through this process. The new system that is being

proposed here is suggesting that we allow more tort, that people be allowed to buy more insurance as well in order to cover some of the areas that aren't going to be covered under this system.

How accessible is the legal system going to be to those whom you speak of very eloquently here this morning re this piece of legislation?

Ms Broad: To give you an example, in Chapleau, which is a community located on the border between Algoma and Sudbury districts, there are no legal services at all. In order for them to access a lawyer, they have to travel to Sudbury, which is over two hours' drive away, or Wawa, which is an hour and a half away but is in a different court district. You can get information from a lawyer there but you can't initiate any court action from that location. So basically, Sudbury is where you're going to have to go.

For a person who is living on a low income, knowing that he might be able to get benefits at the end of a two- or three- or four-year process is really not very helpful. People who are living on a low income have to worry about this month's rent, not next year's and not somewhere down the road. You're concerned about making your payments today, about feeding your family today, and if you do not have any income in the meantime or your income is severely reduced and you have to wait, you're talking about again putting people back on to social assistance. I think this government particularly has already decided that most people should be off social assistance and have initiated a number of actions to indicate to people on social assistance that they should be seeking some other means of support.

The two things don't go together. If people are going to be forced to rely on social assistance, then on social assistance they have to have a decent level of income. If you want them off of social assistance, then you have to ensure that other things are in place to meet their day-to-day needs.

The Vice-Chair: Ms Broad, on behalf of the standing committee, thank you very much for your presentation.

ARTHUR DAY

The Vice-Chair: Our next deputation is Dawson and Keenan Insurance Ltd; Mr Arthur Day. Welcome.

Mr Arthur Day: My name is Arthur Day. I am a retired insurance broker working for Dawson and Keenan, or I was working for Dawson and Keenan before I decided to retire. I've spent the last 35 years arranging insurance for the citizens of this city, across the desk, eyeball to eyeball. I certainly support and understand the concerns of the previous two speakers.

I just work the system as given to us by the insurance companies, and I can tell you that I am dismayed by yet another change. I represent no other association or no other person other than myself. I experience frustration at the attempts of our elected representatives to keep on trying to fix this system. I don't think it's broken. It just needs amendments in the way that Revenue Canada from time to time issues interpretation bulletins. I understand now, talking, that this Bill 164 cannot be amended. It is enshrined in legislation. The only way it can be changed is by a new act.

I would just like to have your indulgence for a little while and go through a standard automobile insurance policy. It consists of eight different types of coverage. I've picked a 1992 Chevrolet driven by a mature person—that is, a person over 25 years of age—married, driving to and from work. The first portion then would be the liability. That's what you buy to cover you for the threshold coverage. The second would be property damage where you may drive your vehicle into a house or you hit an unlicensed vehicle such as a tractor. The third one is accident benefits, and that's really what we're here for today. And there are four others. If you break these premiums down, you will see that almost 50% of the cost of this particular insurance policy is based upon property damage. I don't know whether this subject has been mentioned during these hearings.

I believe that this insurance policy is the most luxurious package sold in North America and, for the coverages that are given, I think it's a fair deal because you have cars valued all the way up to \$50,000, \$1 million liability, all kinds of benefits. I think \$1,000 for what this policy provides is a fair deal.

If we are going to achieve or attempt to achieve any kind of premium savings in the future, we've got to look at both sections of the policy: the property damage section and the bodily injury section.

The price of a new automobile is getting to be out of the reach of many, many people. In fact, I believe in the year 1995 was the least number of new cars sold for the past 20 years.

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So here we have all kinds of worn-out old wrecks on the road, and I understand that the average age of a car on the highways in Ontario is somewhere around about 8 to 10 years. Most insurers have a loose rule asking for safety inspections on vehicles that reach 10 years, but it is an extremely competitive industry. In our office we're losing business on a regular basis every day and we're gaining business. There is a constant runaround. I liken it to a bathtub with the tap running and the plug out at the bottom. It's always going down the drain and it's always coming into the tap.

What I would like to do is recommend that we follow some of the principles of what is done in England or the United Kingdom and, now I find out, in Germany. All vehicles that exceed an age of three years are required to have a safety inspection before licence renewal. The insurance industry will not do it by itself because it's too competitive, but I do believe that the government should slowly introduce such a system of requiring safety inspections. I have no statistics to prove what I'm saying, but it might be of interest to inquire of the licensing authorities in Germany and the UK to see if they have any statistics that might be of use to the licensing authorities in Ontario—for that matter, in Canada.

There are many more cars on the road in Britain than here in Ontario, and Britain will fit into Ontario four times. So why did they do that over there? Maybe they have a point. As far as commercial vehicles are concerned in Ontario, there are strict rules. We may have read in the paper of some of the vehicles being held together with string and baling wire. I don't want to bore

you with reading out what I have written, except to say that commercial vehicles are very strictly controlled as far as the safety of the vehicle itself is concerned.

Driving habits are atrocious. In this city, on the weekend of February 2 to 4 there were 47 police-reported accidents. I'm pretty sure that the health providers will be having lots of income and a field day from that weekend.

I urge government to get into the business of vehicle safety and promote safe driving habits. It would be politically neutral, and who could dare complain or challenge any government or any political party about measures to save lives and possibly contain rising insurance premiums?

The ministry keeps track of driving infractions for three years. Two at-fault accidents which could easily be computerized into the system should require a new licence or a retest of licence and a driver training program.

Turning to the accident benefits section, the premium that I have described represents just 32% of the premium you pay. We have workers' compensation, unemployment insurance, private health plans and auto accident benefits all competing with one another all over the place to provide us with protection. There is duplication everywhere. A lot of people—professionals who have an advantage—buy group insurance which would protect them for all their automobile accidents, and they don't need to use their automobile accident benefits because they already have sufficient private insurance. So what I'm saying is, automobile accident benefits coverage should be scaled down to those people who particularly need the coverage and then they can buy an add-on to protect them, the people who need it, but the people who do not need it should not have to pay for it because that is an added income tax.

With computerization there is the ability to track drivers more accurately. There needs to be more communication between insurers, the ministry that supplies drivers' licences, the people who license vehicles and the police.

We often see a conviction for failure to produce an insurance certificate when the truth is, there's no insurance in force. It happens on a regular basis.

It is my suggestion that the new legislation set fees for rehab and assessments as health care providers seem to charge what they can get away with, what the traffic will bear. Also, I would like to have some kind of time limit on the number of visits. This doesn't probably go very well with the two previous speakers, but I would like to put a limit on the amount you can receive for pain and suffering because all the pressure on me as an insurance broker is, "What's the cheapest I can get the insurance for?" Price, price, price is the number one consideration for the person buying the insurance policy.

I would also like to restore the principle of indemnity. If you're not earning money at the time you have an accident, why should you receive money after the accident? Is that not rewarding people for having an accident? Does that not encourage people to have a minor fender-bender and then claim what we loosely call insurance neck?

Whatever you do, would you please set a system and leave it alone. Keep it going for sufficient time so we can all get to understand it.

We have had three governments in the last six or seven years of different philosophies. This government will introduce plan number 4 and the people working with the public, that's me, the insurance adjuster, we have to try and keep in our minds the four different plans. It's difficult when you're talking to a person, like I'm talking to Mr Chudleigh here: "When did you have your accident? What plan was in effect at the time?" and trying to remember whether it was OMPP, Bill Davis's policy, Bob Rae's policy or now Mike Harris's policy. We've got to try and segment and divide, and we are the people who have to deal with the insuring public.

I would like you to stop using automobile insurance as a political football. Please set a plan that can stay around for a while so we can all get to understand it. We can all build up experience, rating experience, claims experience, and then it may be possible to be able to set a fair price and contain that price for a reasonable amount of time before we have to go back to the drawing board again.

It is said that people are very unhappy with automobile insurance. I also suggest that people are extremely unhappy with the Workers' Compensation Board, which is entirely government administered. So before you mess around too much with the automobile program, put your own house in order and look after the Workers' Compensation Board, which is in far greater stress than the automobile plan.

From a perusal of the Toronto Star and the Globe and Mail as of last Saturday, it was reported that home and automobile insurers had their best year in 10 years. On Canada-wide premiums of \$17.7 billion there was a surplus of \$1.5 billion, which works out to 8.5%. That was the best year in 10 years. Is 8.5% excessive? I really don't know. I don't know how it compares with a car manufacturer or any other major industry. Maybe people in this room could tell me that.

My final comment is, please, whatever you do, whatever you decide, once you have decided, leave it alone for a few years and let it settle down and work its way through the system. That is my urgent plea to all our elected representatives.

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Mr Crozier: Good morning, Mr Day. It's good to see you again. I wonder if you might help me clarify your remarks here in that you have said that the present system is not broken, that it may require some amendments, but then you go on to say that you seem to agree, or maybe you feel it's just a fait accompli, that we are going to move to system number 4, so you're saying give it a chance to work.

Let's step back a bit. You're saying Bill 164 is not broken and you want governments to give insurance an opportunity to work. Would you have said OMPP was not broken and it needed some amendments?

Mr Day: I think OMPP was working quite well when it was changed and so was Bill Davis's policy. All the pressure that politicians or elected representatives receive is on the price of the product. Their constituents complain about the price of the product, so the elected representatives, seeking to please their constituents, seek to carry out the changes that are constantly being made in an endeavour to contain or to lower premiums.

Mr Crozier: It is one of either relativity or perception because you're saying that for what we're getting, the price that you've outlined for an accident-free driver is not really a bad insurance premium.

Mr Day: I think it's reasonable. For example, for workers' compensation, the rate for a construction worker earning, shall we say, \$40,000 a year, the premium his employer pays is somewhere around about \$3,500 a year, 7.5%. So automobile insurance is high, but so is the cover provided high.

Mr Crozier: Do you feel then that perhaps if premium is a problem, and we have one of the better ones in North America, our coverages are simply too high?

Mr Day: They're very, shall we say, luxurious, the finest in North America.

Mr Martin: Thank you, Mr Day, and thank you for coming today. I want to tell the committee that you have in front of you here a gentleman who has been in the auto insurance business for a long time in this community. It's a family-owned brokerage firm that has been quite successful, and so when he speaks, he speaks from much experience, having been there through all the policies he's talking about and having experienced the ups and downs of it all and has somehow been able to keep his head above water. So when I hear from somebody like Mr Day, I certainly am called to pay attention and to listen with a careful ear.

You make some interesting points this morning, not the least of which is, if the system ain't broke, why are we trying to fix it in such a major way? The question I have is, obviously the industry itself is beginning to come out of what some might suggest was a low period of profit-making to now a relatively healthy period of profit-making, and so something obviously was coming together and working.

I know that the Liberal government, when they changed the system, were responding to an industry request to lower the costs to them, particularly in the area of tort and the suits and all that kind of thing that was happening. I think none of us could sit back in that period of time and not be somewhat impressed by the continuing growth in the level of suit that people were able to win in the courts, and certainly there was a red flag went up and people were trying to respond to that. When we came into power, our concern was for the consumer, who in some instances was not getting what he or she needed to maintain a certain life support system and to be able to keep family together in those times.

I know that the industry itself—because you said so here in your report and we've read those reports too—is doing okay. I guess the question is, for me, how is the broker in a community like Sault Ste Marie doing in all of this? How are you doing? If you're not asking for the change—we worked hard at trying to put a system in place that was a bit more generous to the consumer, and the actual rate of premium is the big problem at this particular point in time, but the industry itself is actually making money—who is asking for the change?

Mr Day: When I said that the industry had an 8.5% return, that of course would be Canada-wide. That would also of course include the premiums that are paid to insure houses, that are paid to insure bridges, and all

kinds of other endeavours that people engage in. I do not know the level of automobile insurance premiums in Ontario. I believe it's around about \$4-5 billion. I do not know the profitability of the automobile system now in Ontario. But if you are an insurance company endeavouring to do business in Canada, you have to be in all branches of it. You cannot just say I will insure houses and nothing else. You have to have a full line. Automobile insurance is just one of the many products.

In due course, maybe next summer or in the fall, statistics will come out that will identify and clearly zero in on the profitability or otherwise of automobile insurance in Ontario. I want to reinforce that if you are an insurance company selling in Canada, you have to take a full line to be able to transact business. I do believe that, as has happened in prior years to some degree, automobile insurance in Ontario, which is maybe 35-40% of the total premiums paid in Canada, is being subsidized by the other branches of insurance that is sold. When I talk about profitability, it is for all endeavours of the insurance industry.

Mr Wettlaufer: Mr Day, 8.5% profit for a risk-type industry: Given that the average return on equity for all businesses in 1994 was 7.5%, 8.5% for a risk-based industry wouldn't seem to be too rich a profit, would you think?

Mr Day: I don't think it's too rich a profit. I really don't know what other industries seek to achieve, say the banking system or the trust company system, but it seems to me that 8.5% is not really out of line.

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Mr Wettlaufer: From your experience, there seem to be other suggestions from around Ontario that there is a severe shortage of market for automobile insurance in the independent brokerage system for the broker's clients. What do you find in the Sault?

Mr Day: I can only speak for my office. We have too much capacity. We have companies visiting us and calling us, criticizing us and threatening to pull out of our office unless we send them more business. So our problem is the reverse of what you've just mentioned.

Mr Wettlaufer: So the companies are demanding greater volumes of business from you.

Mr Day: Correct, and they're prepared to take what I would call their cross-section and their fair share of all the business we send them.

Mr Wettlaufer: Is this a recent development within the last six months to a year, or was it prior to that?

Mr Day: It's been my experience in my office way back to Bill Davis's time.

Mr Wettlaufer: Okay, so that is probably because you are producing business which is making a profit for the insurance companies.

Mr Day: That's probably the case. I also brought along with me a list of all the insurance companies with which we do business, 18 in total. That number would include the Facility, and in 1995, 2.1% of our premiums went into business in the Facility. It is not nearly as bad, the market is not nearly as restricted as some people would tell you.

Mr Wettlaufer: If your business suddenly turned unprofitable for the insurance companies for whatever

reason—number of claims perhaps or amount of claims—would you tell us what has been happening elsewhere, for the record?

Mr Day: I guess if our business turned sour it would be a reflection of the marketplace, and if our business turned sour because we write an average cross-section across the community, then if the marketplace turned sour, then of course premiums would rapidly escalate.

Mr Wettlaufer: But there would also be cancellation of some of your contracts.

Mr Day: Yes, it would be for the most part on volume, on the lack of business going into that carrier.

The Chair: I'm afraid we've expended our time limit. Thank you very much, Mr Day, for joining us today. We appreciate your input into this committee.

BIKERS RIGHTS ORGANIZATION, ONTARIO

The Chair: We have one deputation left prior to the lunch hour. It's Mr Gerry Rhodes with the Bikers Rights Organization, Ontario. Welcome to the committee.

Mr Gerry Rhodes: First of all, Mr Dave Howson was supposed to make a submission. Unfortunately, work schedules prevented him from being here today. I'm not used to speaking in public, so I'll be a little bit nervous.

Good morning, ladies and gentlemen. On behalf of the Bikers Rights Organization, I would like to thank you for the opportunity to make this presentation before this committee.

Briefly, BRO Ontario has been in existence since 1978 and became incorporated as a non-profit organization in 1984. BRO's aims and objectives are:

- (1) To foster and develop improved understanding and awareness of motorcycles and their riders.
- (2) To foster and promote motorcycle safety and responsible riding practices in the motorcycling community.
- (3) To promote friendship and understanding among all motorcyclists.
- (4) To promote legislation affecting motorcycles generally and to oppose or support, as the case may be, any contemplated legislation by provincial, municipal or other authorities in so far as the same may affect the motorcycling community.
- (5) To endeavour to achieve a closer relationship and better understanding between motorcycle owners and operators and law enforcement officers with a goal to identifying and solving problems of mutual concern.

Our members over the past years have worked hard in areas that other motorcycle organizations bypassed in favour of other interests; to note, lifting bans on motorcycles in provincial parks, upgrades to the drivers' handbook, promotion of motorcycle awareness month, and hosting the first national safety conference for motorcyclists.

Our members firmly believe in freedom of choice and education, not legislation. This is what brings us before this committee today.

Freedom of choice: I'm not sure what that phrase may mean to you, but to us it means responsibility. The motorcyclists of Ontario have in the past five years seen their freedom of choice for insurance eroded to almost

extinction. Their choice of insurance options has been reduced to the point that many riders have either given up motorcycling or chosen to continue riding without insurance. Neither of these are acceptable, either for the industry or for the general public.

Problems: We have read and agree with the MMIC submission—the MMIC is the Motorcycle and Moped Industry Council; you people have already listened to them—and support their priority issues for motorcyclists, to wit: (1) reducing insurance premiums, (2) maintaining the loss cost transfer system, and (3) non-reduction of verbal threshold and \$15,000 deductible for non-economic loss.

We also have concerns to add to these issues: (1) the practice of tied selling, (2) bicyclists and pedestrians are excluded from the uninsured motorist plan, and (3) penalties.

When insurance becomes unaffordable, those riders who stop riding cost the insurance industry revenue and lost premiums, and the government of Ontario revenue in lost licence fees, lost sales taxes for vehicles, parts, accessories and repairs. Obviously the private sector also loses revenue with the resultant manpower layoffs placing individuals on the unemployed or welfare rolls.

There are 400,000 licensed motorcycle operators in Ontario, but there are only 111,000 stickered motorcycles legally in use. There are approximately 220,000 plated, not in use motorcycles languishing in storage, due in part to unaffordable insurance. This represents a significant number of dollars which are not circulating in our economy. From personal experience, my motorcycle insurance is one and a half times my car insurance.

We have some suggested solutions. These are long-term; these are not overnight solutions.

Reducing insurance premiums: The major way to reduce insurance premiums is to reduce the insurers' costs by firstly reducing accidents. Education of the riders and the general public has been demonstrated to reduce accidents.

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This is suggested solution 1: Declare May as motorcycle awareness month in the province of Ontario. It is in the best interests of the insurance companies, the motorcycle industry and motorcycle riders to promote this. The motorcycle industry and the motorcycle organizations of Ontario presently do this. It is time for the insurance companies and the government to become actively involved.

Suggested solution 2: Offer new riders incentive for participation in rider safety training courses. Level 1 of the graduated licensing should last a minimum of 180 days. Level 2 should last a minimum of 24 months. With participation in a rider training program, these periods would be reduced to 90 days and 12 months, respectively, with this course also accrediting 24 months of safe riding time for insurance purposes. You have to give them an incentive to take these courses to reduce the number of accidents. It's been proven to save lives, reduce accidents.

(3): Educate automobile drivers. Two thirds of motorcycle accidents are caused by automobile drivers violating the motorcyclist's right of way. This is of great concern

to insurance companies as it could directly reduce costs all around. Revisions to the automobile drivers handbook and inclusion of motorcycle-related questions to the drivers written test would be an aid to this endeavour. For example, two-lane street, motorcycle at a stop light; can you pull up beside the bike and make a right-hand turn? Yes or no? The answer is no, of course.

Loss cost transfer: The lost cost transfer must be retained as this would justifiably penalize the guilty and prevent unfair premium increases to the innocent parties. As previously stated, a large percentage of motorcycle accidents are the fault of the other driver. It is grossly unfair to saddle motorcyclists and their insurers with the costs of an at-fault driver and allow that individual and their insurer to walk away from their responsibilities. However, there are provisions of the loss cost transfer that duplicate services in insurance in general. For example, death and funeral benefits could remain as no-fault. Those persons with death and funeral expense insurance coverages should be able to opt out with a corresponding reduction in premiums so there's not a duplication of services already in their possession—private insurance, employer insurance. If the consumer does not already have life insurance, their insurer could still offer them a competitive product. This is a realistic way to reduce premiums. In fact, I think the gentleman before me touched on that very subject.

Verbal threshold and the deductible: The MMIC has spent considerable resources and effort to research and comment on this subject. We fully agree with their statement on this matter and we quote: "For the long-term stability of insurance costs and premiums it is imperative that the verbal threshold and \$15,000 deductible for non-economic loss for catastrophic impairments not be lessened. In our opinion, the proposed definition is broad enough and flexible enough to adequately and compassionately serve any person who suffers a catastrophic impairment. If the verbal threshold was broadened it would, in our opinion, undermine the long-term sustainability of benefits and stability of insurance costs and prices."

In the Bikers Rights Organization's opinion, reducing these limits would increase the numbers and opportunities for frivolous and fraudulent lawsuits. The point we're trying to make with this is that we endorse what the business end of the motorcycle situation is asking you from the point of the consumer and the motorcycle enthusiast. We agree with them.

Tied selling: Currently in the province of Ontario there is only one company that offers standalone motorcycle insurance at normal, competitive rates. All other firms offer standalone at Facility rates, which for riders with good records is unaffordable. It's also completely unfair. Unfortunately, the only standalone firm has a blacklist of motorcycle models which they will not insure irrespective of the rider's record or skill level. The motorcycle is not the problem. Those crashing these machines perhaps do not possess the skills required to operate any motorcycle safely. Please refer to our statements on rider training. Tied selling is illegal and the dissuasion of such practice should be pursued aggressively. Quite simply, I challenge any of you to go out there and try to find standalone

motorcycle insurance at a competitive rate. I'll give you my driver's licence number, the serial number off my Harley. You go try to find it at a competitive rate from anybody other than Jevco without buying some other form of insurance.

Uninsured motorists plan: Bicyclists and pedestrians must be included in the uninsured motorists plan for at least one good reason: Paul Sweete. This motorcyclist was catastrophically injured in an accident caused by an irresponsible bicyclist. As a result, this individual is no longer entitled to accident benefits nor is he employable in the trade he was working in at the time of the accident.

Penalties: We agree to the raising of the penalties for not obtaining insurance when riding. However, we would feel it would encourage people to obtain insurance if the fine structure was \$1,000, as you have proposed, or the equivalent to the Facility rate premium for the vehicle—car or motorcycle—that they were operating when they were caught, whichever is greater. The irony of what the fine amount is to be based upon may prevail upon people to purchase the insurance in the first place. This is respectfully submitted by this rights organization.

On the last page that is attached, you will find a copy of the prohibited list, the blacklist. You can't get insurance on those motorcycles from one particular company. If you want insurance on these motorcycles, you're buying Facility rate irrespective of your driving record.

Mr Martin: Just a couple of things. One, I think any of us who have been representing communities in the government of Ontario for the last two or three years know of the tremendous challenge motorcyclists face to get insurance because you've been in to see us and we've heard the stories and we know of the challenges there. One question I want to ask—I'm going to ask you two questions and I'm not going to get a chance for a second, so if you can remember them—I'll see if I can remember them first.

Is this package that's on the table today going to be helpful to you? The new package that the government is proposing to bring in or has presented for discussion at this point in time—will that be helpful? The second question I want to ask you is—and it's tied to, you're right, Mr Day's presentation—the question of, why fix the whole thing if it isn't broken? If there's pieces of it that can be worked with to make insurance more accessible and less costly to people, why not do that?

You mentioned the overlap of various insurance policies and how, if somebody was able to disentangle that somehow, that we might find ways, then, to make insurance less expensive. Has your organization, or any organization that you know, done a costing of that or gone into that in any detail so that we have some clear idea of how this could be helpful and how it might affect the cost of premiums if we were able to sort that out? So there's two questions there.

Mr Rhodes: I think you may find that insurance company actuarial studies may have that information. I couldn't tell you for certain. No, I can't tell you whether or not someone has specifically sat down and said, "Okay, X number of dollars could be removed from this policy or that policy because it's overlapped by somebody else's package." That premium has to be based on

some sort of an actuarial study compilation of actual costs that the insurance companies have to pay out in claims. Based on their formula that they used to come up with that premium amount, they should be able to break that cost out for you. They had to come up with it in the first place, so they should be able to come back to you and say, "Yes, this many dollars in these premiums is due to the death benefit, this many dollars is for collision, this many dollars is for injuries." They should be able to break that out for you. They had to come up with it in the first place to produce the premium.

Mr Martin: Okay. Is this package going to be helpful to you?

Mr Rhodes: We believe it could be if the recommendations that the MMIC have come up with are also included. You have to put a ceiling on costs paid out. Extremely high payouts for ridiculous reasons, fringe lawsuits that you sometimes see, people receiving what might seem to be small amounts of money—\$15,000, \$20,000, \$30,000 at a time—for loss of enjoyment or loss of companionship because they were in the hospital for a few weeks, this sort of thing—it doesn't seem to make a whole lot of sense.

1220

Mr Sampson: Thank you for your presentation. I would put to you that moving from a heavy no-fault component to what's more of a tort component will actually benefit the bike drivers of Ontario because you won't have to rely upon the loss transfer mechanism to put the loss on where it should be. As you've pointed out so rightly, in the majority of cases it's not the biker who is at fault in an incident, and so the package we have in front of you—and I think this is the message we got from the moped and motorcycle coalition—to the extent there's more tort in it does in fact help.

My question to you, very quickly since we don't have a lot of time: Apart from the fact that it does shorten the pool, so to speak, that one has to access to charge the premiums and allocate the expenses associated with loss cost, would a particular program specific for motorcycle drivers in your mind be appropriate?

Mr Rhodes: Certainly, if there was a program that was specific to motorcyclists that understood the concerns of motorcyclists—because we are a unique vehicle. When we go down in a minor collision, we get hurt. A minor collision in a car, you get out and holler at the other driver. Something that was put together with motorcyclists and the motorcycle industry, the insurers and the government, working together, would be a good idea.

Mr Sampson: The message I've heard from the motorcycle owners is: "We don't need the death benefit. If I did that I'd buy life insurance. Give us the access to tort." Maybe the first-tier injury level doesn't make sense because, as you said, either you have a very minor injury or it's a catastrophic injury. There are very, very few motorcycle incidents that cause that sort of first tier of injuries, so why bother having it and why do I pay for it?

Mr Rhodes: Yes.

Ms Castrilli: Thanks very much for coming in. I like some of your proposals and I wonder why we haven't thought of them before, the notion of you riders being offered an incentive. As a parent of a teenage daughter,

I know that I pay a reduced premium because she's been through the driver education course. It just makes sense to me that you want to do it in other areas as well.

I wonder if you might put some flesh on the things that you have told us. I have a question first about all these bikes. What's left after—if you can't insure these except through Facility Association, do you have a wide range to pick from?

Mr Rhodes: No, you don't.

Ms Castrilli: Is it as many as this that's left, or a third of this or—

Mr Rhodes: Oh, yes. There are as many motorcycle models left as that, plus. You'll find that the majority of the motorcycles listed here are referred to as a sport type of motorcycle.

Ms Castrilli: Right. So your Harley is okay. It's not on this list.

Mr Rhodes: It's not on this blacklist.

Ms Castrilli: Okay.

Mr Rhodes: However, it's certainly right up there. In spite of its displacement, it's actually rated higher for insurance premiums than a Japanese motorcycle of the same displacement.

Ms Castrilli: Tell me a little bit about the cost. You said your insurance on your motorbike is about one and a half times, and you're not on any tied selling policy. Even though it's illegal, it still is the practice.

Mr Rhodes: No, I am with Jevco.

Ms Castrilli: So you pay Facility rates.

Mr Rhodes: No, not for this one.

Ms Castrilli: Because it's not a prohibited—

Mr Rhodes: That's right. It's not a prohibited vehicle or a listed vehicle with them. But I have an older model luxury car, a three-quarter-ton truck and a 1947 Plymouth insured for about the same amount of money as it would take to insure two motorcycles.

Ms Castrilli: If you were to have one policy, could you have one policy for all of them together and would there be any benefit?

Mr Rhodes: No, I can't right now. If I could purchase fleet insurance, I could add another motorcycle right now.

Ms Castrilli: Yes. You must have two motorcycles in order to do that.

Mr Rhodes: Yes. In order to get fleet insurance, you probably would have to have a business. You cannot get bulk insurance—my wife and I are the only two people driving. We have four vehicles registered, insured at all times. We can't drive them all the time and we don't lend them out.

Ms Castrilli: But you basically have no choice. You can't go to different packages—

Mr Rhodes: We have no choice. I have to buy a full package for every vehicle, regardless.

The Chair: Thank you, Mr Rhodes, for presenting to us today. As a father who has a daughter who rides a Harley, I appreciate your presentation.

Mr Rhodes: Okay. Thank you.

Mrs Marland: Does the father get to ride the Harley?

The Chair: The daughter won't let the father ride the Harley.

Mr Rhodes: I don't blame her.

Mr Sampson: Is there a reason, Mr Chair?

The Chair: Yes. She's seen me ride motorcycles before, I guess.

I do apologize to the committee. We ran late today and we are late for lunch. However, our 1:20 has been cancelled and so we will reconvene at 1:40. The checkout time, I remind you, is 1 o'clock. Our travel arrangements for the airport will leave at 5 pm. That is different than it is on your schedules, so I would ask you to be aware of that.

Mrs Marland: Are we getting an earlier flight?

The Chair: It's anticipated it might take us a little bit longer to get to the airport. As the final point, I would point out to the committee that Mr Ford is celebrating a birthday and I've been unable to find out which birthday it is, but happy birthday, Mr Ford.

Did you have a statement to make before the committee, sir? Excuse me, can we have your attention for just a moment, please?

Mr John Walker: Mr Chair, my name is John Walker and I was slated to appear before the committee today at 1:40. That is my information.

The Chair: Yes. That's true, sir.

Mr Walker: I had a past motor vehicle accident victim come to see me. He is not now my client. I assisted him in putting together a brief submission for the committee. I know that he called in, but no one has called him to say when his time is. So I'm asking the committee to entertain that person in my slot at 1:40. His name is Niko Marinovich and so, by your leave, he will appear in my time slot at 1:40. I have made some copies of what he has to say that I would leave with the clerk.

The Chair: Does this meet with the committee's approval? That will be great.

Mr Walker: Thank you.

The Chair: Thank you very much. The committee is in recess until 1:40 this afternoon.

The committee recessed from 1227 to 1341

NIKO MARINOVICH

The Chair: You heard before lunch that we've had a switch in the presenter for 1:40 pm. We now welcome Niko Marinovich to the committee. We have 20 minutes together.

Mr Niko Marinovich: Good afternoon, everyone. My name is Niko Marinovich. I am 26 years old. I was involved in an accident on November 23, 1993. In the accident, my car was struck head-on by the other car. I was not at fault. I was wearing a seatbelt. As a result of the accident, I sustained a closed head injury. As a result of the closed head injury, I have cognitive problems. I receive physiotherapy and occupational therapy now.

At the time of the accident, I had been working for four years at a labour job at the Algoma Central Railway. I have not been able to return to that job. My doctors tell me I will never be able to return to that job in the future. I was earning about \$460 per week.

In about May 1993, before my accident, I purchased a franchise called Alvin Siding Cleaners. We cleaned the vinyl siding of homes and could do industrial siding year-round. At the time of the accident, my business was just starting to grow and at that time I had not really earned

a real profit because of initial amounts which I spent to start up the business. I expected to earn much more in the future.

Under the OMPP statute, I am paid accident benefits but there's no limitation on what I can seek from the other driver and his insurers towards my past and future income losses. If I had been injured while the new proposed insurance plan was in place, I would not be able to collect all of my actual past and future losses.

By limiting my rights to seek compensation to 85% of my net pay, I would be losing 15% of my net pay and the loss of gross pay against which I could have written off any losses which I sustained during the startup period of my new cleaning business. Even the loss of 15% is very important to me because of my relatively low wages.

While I commend the government for its new amendments, I urge you not to limit in any way the amount of the past and future income losses, which I would actually lose as a result of my accident if my claim had been governed by the new proposed amendments. It is just not fair to victims that they should be penalized for trying to start up a business which would hopefully provide employment to persons in this province in the future.

I am told that there is a proposal that in some cases there may be a mandatory use of structured settlements for lost income. I understand that to mean that the insurer who is called upon to pay any money to a person who is injured may be able to purchase an annuity which would pay the anticipated loss of future income to the victim over a period of years and that the victim would not be allowed the right to make his or her own investment decisions about how they would invest their money.

I urge the committee to recommend that structured settlements not be made mandatory. I am told that the rules of court leave that to a judge at present. I am also concerned because long-term interest rates are low and better investments can be made in other places for higher rates of return. I also wonder who will guarantee that the money will be paid. Thank you for listening to me.

Mr Sampson: Thank you for your presentation. Your paper here talks mostly about the income loss component and so maybe we could focus on that for a second. You indicated that you had purchased a franchise just before your accident. One of the difficulties we had in dealing with looking at the auto insurance legislation was: How do we deal with small business owners and the fact that during a large part of their life as owners of small businesses they are not taking home a lot of pay but generally building up the worth and the successful nature of the business? So how does one accommodate for that in the event of an auto accident where the individual is unable to attend to the business any more?

We felt it was probably more important, or as important, that the small business owner and the insurance company come to grips with what that value is that you're bringing to a business when you buy your policy as opposed to under the current arrangement where you come to that discussion and negotiation after an accident has occurred. So one of the provisions of the proposal that we have in front of us is that an insurer and a small business owner will come to grips with what the loss of income would be if he or she were unable to attend to the

business, and that's the level to which you would buy auto insurance and that's the level to which an underwriter would underwrite the risks associated with your particular auto policy.

In that scenario I think you'd find, especially since you were not at fault, the draft legislation that we've brought forward would provide for the loss of income you appear to have had as a result of not being able to attend to your siding business. How do you feel about that arrangement? Would that, in your view, have helped solve some of the problems that relate to your siding business and the fact that you can't attend to that business like you used to before the accident?

Mr Marinovich: I do not really understand the question.

Mr Sampson: Right now you're saying that you don't have time or you can't attend to your siding business. Is that true?

Mr Marinovich: I cannot work it.

Mr Sampson: So it's not being worked at all?

Mr Marinovich: No.

Mr Sampson: And you'd spent a considerable amount of time and money prior to the accident getting that siding business up and running. Is that right?

Mr Marinovich: Yes.

Mr Sampson: So as a result of the accident you would expect somebody to compensate you for what you invested and what you lost.

Mr Marinovich: Yes.

1350

Mr Sampson: I guess what I'm telling you is that what we're proposing in the draft legislation would deal with that, especially in the situation where you were not at fault in the accident. Do you think that is a far better situation than what currently is facing you?

Mr Marinovich: It sounds all right.

Mr Sampson: On your comment about 85% of net income and that you would lose 15% of your net pay, are there any costs associated with being employed that you had prior to your accident that you don't have now; for instance, cost of clothing, cost of transportation to and from your workplace? You worked where? At Algoma Central? Is that where it was?

Mr Marinovich: Yes.

Mr Sampson: Were there costs associated with working at Algoma Central that you're not paying for now?

Mr Marinovich: There would just be work wear, as well as union dues and whatever else would come off my cheque for medical, prescriptions, glasses.

Mr Sampson: What would be the ballpark percentage of that? Do you have any idea?

Mr Marinovich: I do not know.

Mr Crozier: Thank you, Niko. On the second page of your presentation you said that you are paid accident benefits and "there is no limitation on what I can seek from the other driver and his insurers towards my past and future income losses." Can you give us some sense of the ease with which you have been able to go to the other insurer and get these future income losses, or have you had any difficulty in doing that? You don't have to tell us how much or anything, but I just wondered about the process. Have you had any difficulty with it?

Mr Marinovich: I really do not know that particular question. That work is done more above my head.

Mr Crozier: So you have a lawyer who is taking care of that.

Mr Marinovich: Yes.

Mr Crozier: Can you tell me, the accident occurred in 1993?

Mr Marinovich: Yes.

Mr Crozier: So a little more than two years ago. It's not settled yet, though.

Mr Marinovich: Oh, no.

Mr Crozier: So you probably would hope that these kinds of things could be settled in less time.

Mr Marinovich: I don't really know about that. Mind you, for other people, they may like that. Myself, I was so badly banged up and I'm still having problems. Money is not going to fix that for me right now.

Mr Crozier: Absolutely. I can understand that.

Mr Marinovich: Just like the weekly benefits that I do receive, or biweekly, whatever they are, they help me get through—just get through.

Mr Martin: Thanks for coming today. I know it takes a fair bit of courage and preparation to come before a committee such as our own. I recognize it isn't always the easiest of things to do. I thank you for coming, because for me you present an excellent example of where what is being proposed here by way of changes to the auto insurance act is not going to work for everybody. What we're trying to determine here, though, is whom it's going to work for.

We're trying to point out to the government and to those who would have influence on this government by way of support or non-support or ability to influence the decisions they will make ultimately—because they have a mandate as government to make major changes, they claim, on behalf of the people of Ontario. Our concern is that those changes so far have been targeted at a group of people who are less able to deal with them than others, and that concerns me, as a New Democrat, greatly.

The previous Liberal government brought in a set of governance re auto insurance that we call no-fault. If somebody gets into an accident, whether they're at fault or not, there's a recognition that if they've been hurt, if damages have been caused, they get paid. There was a way of sorting that out between the two companies and we stayed away from the courts and we stayed away from lengthy legal battles in other venues so that you could get on with your life.

There was a sense that there was still some injustice in that system in that we felt there should be some limited ability to go a little farther to claim through the courts for loss, for pain and suffering and a few other things. That was certainly seen by the industry as something that was going to cost them, because court cases generally cost. Regardless of who wins, they cost both sides, and ultimately in the end, if you as the claimant win, they cost the industry some dollars above and beyond what was in the no-fault package.

Now this government is coming along and bringing in a system that's going to allow for even more legal activity. You'll have to get yourself a lawyer and pay for

him. They'll have to get lawyers. We'll be into the courts and we'll have long-drawn-out battles over who did what to whom and who owes what to whom.

At the same time, they've reduced the amount of money that just automatically—you've had an accident, you've had some damages done to your car and you've obviously had some damages done to your person which are going to have long-term consequences for you. You said a few minutes ago, money is not going to buy you what you need.

But you also have to recognize, and I think you said this as well, that you need to be able to take care of yourself. You need to be able to pay the rent and feed yourself and live a dignified quality of life that's reflective of the community within which you live. This package of reforms will take away from your being able to do that, and anything you will get by way of improvement or increase will be after a long-drawn-out battle with the courts. So lawyers in the end will win.

I'm not sure where the industry sits on all of this. I know the brokers we've heard from so far are having some difficulty with it. They don't see the system that's in place now as being that totally broke. They figure some time for adjustment would be appropriate, and I think they're saying that quite loudly and clearly to the government. The industry, though, or some parts of the industry are supporting the changes that are in here.

If you were given a choice, now that you've had this accident, between being given an adequate amount of money to compensate somewhat for your losses and also to keep you looked after in terms of housing, clothing, shelter and your ability to participate in the community, without having to go through major court action, or the ability to go through major court action and perhaps get something in the end or not, which one would you choose, as a victim and somebody who has experience and is in the middle of all that right now? Which way would you be leaning?

Mr Marinovich: Leaning towards—I don't know what you mean.

Mr Martin: If the choice was, you had an accident and somebody sits down with you and works out what you need to get better, to take care of some financial cost that was incurred because of the accident and then to get on with your life, a package that automatically found a place that was adequate, that wasn't 85% of your net but perhaps 85% of your gross or 95% of your net or whatever, but that more adequately reflected the reality of today's cost of living in the community, or you had to go through major court proceedings, with the cost of a lawyer and all that brings, which one would you choose?

Mr Marinovich: I would choose getting 85% of my gross in that same setup. I can get along. People don't just die off without any money. It's something that, "Give me a little bit, and I'll do whatever I can with this and I will try to get myself better with whatever they do." I'm lost at that question. I don't know.

Mr Martin: Thanks anyway.

The Chair: Mr Marinovich, it's seeing people like you that brings the realities of the insurance business home to us, and we thank you very much for making your presentation today.

1400

GERALD WILLIAMS
CAROL WILLIAMS

The Chair: We next welcome Carol and Gerald Williams. We have 20 minutes together.

Mr Gerald Williams: I wish to thank the committee for the opportunity of doing this this afternoon. My name is Gerald Williams. Let me start by thanking the government for their attempts to improve the present state of the automobile insurance law in this province. I know it is part of your campaign program for the PCs and I hope, on behalf of the accident victims in this province, that the Harris government will make things right.

I was involved in an accident on May 31, 1995. I was a pedestrian and I was run over by a runaway car. I was not at fault. As a result of my accident, I sustained injuries to my pelvis, hips and both femurs. I receive physiotherapy now. I am presently confined to a wheelchair but I am hopeful that I will become more mobile with time.

At the time of the accident I had been working for McKevitt Truck Lines since March 1995 as a mechanic. I have not been able to return to that job. I am not certain if I will ever return to work as a mechanic. I was earning about \$640 a week. Under Bill 164, I am paid accident benefits of 90% of my net income and I cannot recover any economic benefits from the person who caused my injuries.

Other economic expenses: At my place of employment at the time of my accident, there was a benefit package to which I would have become entitled after 12 months of service. The benefit package to which I would have become entitled included dental, drugs and major medical coverage. My wife is not covered for any drug expense under the motor vehicle policy as she was not the injured person. Her drug expenses are presently about \$200 a month. Starting on March 27, 1996, we will have an average cost of \$2,400 per year, which arises because of the accident and for which I cannot seek compensation from anyone. There are also dental expenses which I have to pay for myself and my family, which would have been covered after March 27, 1996, had the accident not occurred.

There does not appear to be any provisions in Bill 164 amendments by which I can recover that loss from my own accident benefit insurers and there does not appear to be any provisions in the new proposed amendments which would allow me to recover those expenses either. I urge the committee to make a recommendation to change the provisions of the Insurance Act to allow me and other victims to recover this type of loss from either my own auto insurer or the person who caused the accident on a fault basis.

General damage assessment deduction: Under Bill 164, my claim for pain and suffering and loss of enjoyment of life are subject to a deductible of \$10,000. This amount, in my view, is too high. I ask why victims who sustain a major injury should have their legitimate claim reduced in any way.

The proposed increase in the deductible amount to \$15,000 for me and from \$5,000 to \$7,500 for each of

my Family Law Act claimants seems even more unfair. I know that the purpose of the deductible is to keep claims for modest injuries out of court, but where it is established that the claim is substantial, I ask why there should be any deductible at all.

Notice of intent: I have been watching some of your committee hearings on television. I saw where the new proposed amendments required that notice had to be given within 120 days of the accident in order to be able to claim, unless a judge orders otherwise. While I understand that this may assist insurers to plan for potential claims, I think that it imposes too much upon the accident victims to make sure that they have given the notice within the time limits, and I suggest this provision be deleted.

Mr Crozier: Did you have your own auto insurance at the time?

Mr Williams: Yes, I did.

Mr Crozier: So it's your auto insurance that's responding?

Mr Williams: Accident benefits that are paying me now.

Mr Crozier: You brought up something that's very interesting, and I guess I'd like your comments on it further, but it's more for our information than anything. The question is often asked, why can't it be 85% of net or 90% of net or 80% of gross, because it costs you less. You stay at home, you don't have travel expenses to work, you don't have to buy clothes to work in. But you've brought up a very good point, that even if you have a benefit plan—and what you brought up is that you would have been eligible for one shortly. I think that's valid. Isn't that what you said?

Mr Williams: Yes.

Mr Crozier: There may be those who are employed who have a benefit plan. In fact it brings to mind a case where an employee was considered no longer to be employed when they were on long-term benefits. They weren't under a contract that would have provided for it and they were no longer considered an employee because they were on long-term sickness benefits and lost their benefit program. Do you have any idea, even a ballpark figure, what that might have cost, what the benefit plan may have cost that was available to you at your place of employment after 12 months?

Mr Williams: For just the dental plan would have been \$10 a month; everything else was free at the place of employment.

Mr Crozier: But there would have been, these days, probably some significant premiums attached to that.

Mr Williams: I did not have to pay those premiums; that was paid by my employer.

Mr Crozier: But the plan was worth X number of dollars, and presumably even though you don't have to pay it, it's part of your considered total remuneration.

Mr Williams: Yes.

Mr Crozier: Can you even get a benefit plan now, a drug plan, a dental plan? Could you even buy one on your own that you know of?

Mr Williams: Yes, I could get Blue Cross or Blue Shield, which is going to cost around \$175 a month—I looked into that one time—for my family, which would have to come out of my pocket.

Mr Crozier: I think you've raised a valid point, that there's an employment expense, be it one that you paid off your paycheque or one that was considered part of your overall remuneration, that you no longer have and/or would have to go to that expense to get. I thank you for bringing that to our attention. I'm not aware of anything in the legislation either that allows for that, but there may be. But I think it's a good employment expense point that you've made.

Mr Martin: I'm going to ask you the same question I asked the previous presenter, because I'm not sure if I'm even understanding it fully, but as a person who is caught up in the system at this point in time you may.

It seems to me that what this legislation is about is tradeoff. It's a tradeoff between people who have been hurt by way of accident and the amount of money that they get almost automatically now if they can't go back to work or if they've acquired a certain amount of damage to themselves or to their ability to provide for themselves. There's an established sort of formula that kicks in that doesn't require a whole lot of legal wrangling and high anxiety around whether you're going to get this much or this much or anything at all.

This government is proposing that we should reduce that, that somehow that's too high, that the amounts of money that people who have been hurt are getting are too much and it's costing the system. Obviously, somebody is telling them that. It's costing the system in a way that is causing premiums for insurance to go up, and that's creating a bit of a hue and cry out there in the general public.

1410

The tradeoff, then, is an ability to go to the courts and use the courts more, have more access to the courts, which of course has with it all kinds of questions, in my mind: a person's ability to hire a lawyer in the first place and to keep a lawyer on for the length of time that it often takes for the system to work its way through some of these very complicated and difficult law cases, particularly as you try to prove some of the things that you know in your mind and your heart are the truth about what you had in front of you by way of your future that now is no more. Given that tradeoff, those options that are being put on the table today as things that we perhaps should be looking at in order to keep premiums at a level that everybody can afford and yet at the same time provide support for people who have been hurt in an accident, what's your feeling about that?

Mr Williams: I'm not really sure. I know that I have extensive scarring. They had to surgically rebuild both my legs. My back is burnt from being dragged underneath the car 40 yards up the road. So I don't know how you put a price on that. I was underneath that car, hanging on for my life, as it dragged me up that road wide open. It was the car manufacturer's fault for designing something into a car when they had no idea what they were doing. So it would be interesting how it finally turns out. But I don't care what anybody says: they operated on me three times to put my legs back together where they were crushed. I literally had both my femurs shattered for six inches. They had to take pieces out of my one leg to put my other leg back together to save it.

So it's not a point of how they want to lower these premiums; it's how you want to compensate a person who went through a major trauma. Anybody who gets whiplash, it's very hard to prove. A person like me, literally, my legs were within almost amputation, and I had them saved due to some brilliant doctors putting everything back together and lots of steel. I don't believe the \$10,000 deductible should even apply to me, because I was not in another motor vehicle at the time. I was a pedestrian. If I go after the car manufacturer, I will have a legal fight that will be outrageous.

I'm just saying that for the victims that are not at fault it should be an easier time to take care of them and their families. I have to pay all my bills at my other residence. I cannot go to my house because my house isn't anyway near wheelchair accessible. They had to move me. So I have to pay for all those bills at that house plus live in a new residence for however long.

Mr Sampson: Thank you very much, Mr and Mrs Williams, for coming here. I'll tell you, your case raises one of the most bizarre things that came to me very shortly after being asked to take a look at the auto insurance plan, which is that under the current program, if you're walking across the street, which I think was your situation, and somebody runs a light or goes through a Stop sign or does something and hits you, it's your company that pays: not his or hers, but yours. In fact, they may not have significant damage at all. They were on the inside of the vehicle. You were outside, you were the pedestrian, and it's your company that pays. That, to me, was absolutely bizarre.

I think that's one of the fundamental flaws in the design of the current product, because it in no way penalizes the person who did you harm. That's what we're trying to get back to, a situation where you can go after that individual and his or her insurance company to try to right the wrong that they clearly caused. We're not talking about somebody slipping on black ice in this situation, I don't think, and in many of the cases that's not the situation. So I'm pleased that you're here for a number of reasons, not the least of which is that you raised that what I call rather bizarre situation where you've been wronged but you're the one who is paying for it. I don't think that's fair. That's not right. So that's one of the things we're going to try to change with our legislation.

The other question I want to ask you is with respect to the intent to claim, the notice. I know there was no particular requirement, but how long after your accident did you actually notify your insurance company that there was going to be a claim?

Mr Williams: My insurance knew within 24 hours or 48 hours.

Mrs Carol Williams: They contacted me.

Mr Sampson: They contacted you?

Mrs Williams: Yes, they did.

Mr Sampson: The particular notice I think you're focusing on here is a notice with respect to suing the other party. I gather you have a suit in process. I don't want to know the details of it but would ask you, when did you file notice of that suit or when did you approach a lawyer?

Mr Williams: The lawyer was notified within the first seven days too.

Mr Sampson: So within 120 days, it would be quite possible for your lawyer—

Mr Williams: I did not notify the lawyer; my wife did the first week after the accident.

Mrs Williams: The next morning.

Mr Williams: I didn't know who I was.

Mr Sampson: But it would be quite possible for the lawyer to send a notice to that insurance company saying: "Listen, I'm going to sue you. Don't know what for, what amount, but I want to put you on notice that sooner or later we're going to be talking to each other either on the courtroom steps or in the courtroom." You could have hit the 120 days, it sounds to me, well within the time—

Mr Williams: The owner of the vehicle that hit me also notified his insurance company to give me anything I wanted. He was my next-door neighbour.

Mr Sampson: Really? That's even tougher.

The Chair: Thank you very much. We appreciate your presentation today in front of the committee.

Mr Crozier: On a point of order or information, Mr Chair: Mr Sampson made a comment that this legislation is going to correct that, where a pedestrian is struck by a vehicle. So the vehicle owner's insurance is going to pay under this legislation?

Mr Sampson: For the tort side of it. The no-fault benefits will still be covered under the insured's plan; that's right. But right now it's 100%—

Mr Crozier: But they would have paid under the tort side anyway.

Mr Sampson: For general damages, not for economic loss.

Mr Crozier: I'm just curious, but why is that so bizarre? When a vehicle hits another vehicle, limited damage to mine, you suffer a great deal of injury, damage to your vehicle, maybe it took you off the road or whatever—will the same apply there? I just need your help, because that's a detail of the draft I'm not aware of.

Mr Sampson: Right now the only access to the courts under 164 is with respect to general damages, the pain and suffering category. Under our proposal, there are three accesses to tort: general damages; economic loss and future economic loss, which would include future promotions, future income stream of the claimant, over and above the no-fault benefit; and thirdly, medical and rehabilitation expenses over the no-fault benefit. The claimant would have the right to sue the at-fault party should the medical expenses exceed any one of the categories, either in the catastrophic or the non-catastrophic category.

So there are three accesses to tort, where I suppose there's now only one in the general damages side, and there's actually a fourth category to the extent that there is another party at fault. There was some reference here that there might be an auto insurance company at fault. There would be an ability to sue, and because of the way we've structured the arrangement, the suit to that auto insurance company or town or municipality or whatever, the deductible on the general damages would not apply. So they don't get benefit from that, so to speak.

Mr Crozier: Thanks for the indulgence, Mr Chair.

SAULT INSURANCE BROKERS ASSOCIATION

The Chair: Mr Walz, Algoma Insurance. Thank you for joining us. We have 20 minutes. Please proceed.

Mr Robert Walz: The Sault Insurance Brokers Association of Sault Ste Marie wishes to thank the standing committee on finance and economic affairs for this process of reviewing the draft legislation to amend the Insurance Act and other acts related to automobile insurance.

I come to you as the president of the local Sault Ste Marie insurance brokers association, and I'm also a partner of Algoma Insurance Brokers here in the Sault. Our insurance brokerage firm has been established for over 75 years in the Sault and currently has a staff of 32 people. We sell in excess of \$16 million of insurance, with about \$8.7 million in personal automobile insurance business. This represents 55% of our volume of sales.

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I must compliment this committee for allowing this matter of automobile insurance to be brought to a public forum. You've had a barrage of people before you in the past week. I watched with interest some of the comments made, and what a week. You've had the rehab people claiming that lawyers have discouraged their clients from participating in meaningful rehabilitation prior to trial in order to augment the size of future income. Then you've had the lawyers indicating that the chiropractors who once charged \$26 per treatment are now submitting bills to auto insurers for \$35 to \$60 per session. You've had groups both in favour of and not supporting the current automobile insurance system. There have been the medical associations, the fraud associations, the law associations before you.

People who work within the confines of the system have all had their say and each strand of the insurance web is being unspun. But basically what is the origin of this process?

Who is there first and foremost for the consumer? Who is the person who initiates the insurance policy, who brings the claims process and assists throughout the claims process and deals with the concerns of the public year after year?

It starts here with people like myself, the insurance broker, and I am in the trenches. Brokers like myself work with our clients. We, as brokers, can allow a choice in selection of coverage. When the claim call comes in, we're in the front line, and we're there to assist.

The committee before me has heard different points of view, different concerns and several recommendations. And as you well know, what has the press reported? "Little Relief Seen for Car Premiums," Toronto Star; "Costs to Soar for Car Owners," Toronto Sun; "Drivers Face Big Jumps in Insurance Rates," Ottawa Citizen; and "Drivers Pay More Under PC Plan," courtesy the Windsor Star.

The number one concern voiced by the press and actually echoed by our clients is affordability. The current auto insurance plan offers an extensive benefits package, but it's just too costly, and this cost is increasing.

With the costs of claims soaring, market availability has diminished. It has been a struggle and has caused frustration with both our consumers and our associates.

This has been a second area of concern for our clients: availability.

Thirdly, understandability: The current auto insurance plan is most difficult. The consumer cannot readily understand the insurance system that has manifested itself since the introduction of Bill 164.

I therefore request that you keep in mind three key words: affordability, availability, understandability. The new changes in the current auto insurance system must address the matters of affordability, availability and understandability.

After reviewing the information provided on the proposed auto reform, I must indicate that I am pleased about the changes. There are several great changes in this plan that should help to stabilize the cost of auto insurance. I must admit that there are other areas that can be modified.

I am pleased to see the limit for income replacement has been reduced to \$400 a week. Apparently, records indicate that the \$400 will satisfy about 60% to 75% of income earners. As a broker, I will advise my clients that this plan has also allowed the option for top-up limits for those who have earnings in excess of the \$400 limit. I am certain the availability of this coverage will be appreciated.

The death benefit in the current plan allowed up to \$200,000 plus \$10,000 per dependant. I really don't believe it was the intention of the auto insurer to become a major source of life insurance. The new proposed limit of \$25,000 plus \$10,000 per dependant appears to be much more reasonable. Again, there will be optional benefits for those who wish to purchase higher limits. This will also enable those who really need the extra limits to purchase same.

This new plan does distinguish benefits between caregivers and non-earners. In respect to non-earner benefits, I do have reservations that the policy will provide weekly payments for someone who has not earned a wage prior to the accident. The auto insurance policy should not attempt to provide incentive. The policy should be one of indemnity, not entitlement. I am, however, pleased to see that the non-earner benefit is not payable for the first 26 weeks after an accident. It will therefore only apply to more serious cases.

Tort for economic loss will be introduced under this new plan. The ability to sue for economic loss is acceptable and the 85% of net earnings and future income seems reasonable.

The pain and suffering access threshold deductible of \$15,000 is good, but I do question the fact that "impairment of a mental or psychological function" is included. I think this has been said before, but this will open up the floodgates. The committee should consider deleting the psychological impairment terminology. I would suggest "psychological function due to a physical injury sustained to the brain or nervous system." In other words, if the injured has brain damage that causes psychological impairment, a tort action can be considered, as there would be physical proof to confirm same. The statement of physical injury causing psychological impairment can easily qualify this type of claim.

In tort cases, it must also be stressed in this system that any rehabilitation costs awarded to a claimant did

provide some benefit either by reducing the length of the expected recovery period or by returning a claimant back to work sooner.

Should lawyers be allowed to work on a contingency fee basis, an enticement for larger rewards would be implemented. This would drive up the claims costs and would also roadblock any attempt to keep auto insurance affordable.

Raising the fine for driving without insurance is most commendable. However, the maximum fine of \$1,000 may be seen by some drivers as an amount that is cheaper than their insurance costs. This is in relation to the current system. I therefore support the \$5,000 maximum limit suggested under the new plan.

Before I proceed further with information on the rehabilitation issue, I must indicate to this committee that I was also an insurance adjuster for seven years before being an insurance broker. I am also currently completing a risk management designation from the American Insurance Institute.

In the questions-and-answers this committee has endured during the past week, there seems to have been a problem in defining the barriers of rehabilitation. There are a number of barriers that impede this process:

(1) Extended hospitalization due to a lack of coordination of medical care and/or poor discharge planning.

(2) We find that there is uncoordinated medical treatment. As opposed to the haphazard application of health care services—we've had people here today who say they've been bounced around from doctor to doctor and there seems to be no ready plan laid out for them when this rehabilitation issue takes place—the injured should receive scheduling services, such as physicians, nurses, the therapists, the chiropractors, so that the timing of each service will be most effective. There should be a joint treatment goal among all health care providers, including discharge or return for work planning. There seem to be no goals among everybody that seem to help these people during the rehab process.

(3) There are other uncoordinated medical treatments that include duplicate diagnostic tests because health care personnel are not sharing information; conflicting treatment programs and medications, as the injured does not have a doctor who coordinates the many specialists who often contribute to the case; doctor shopping by the injured because they may not be satisfied with the results of the treatment.

Rehabilitation should be seen as a cost-saving measure. The cost of rehabilitation should be less than the cost of future funds that would have been paid for medical treatment had the rehabilitation procedure not been done, and/or the savings experienced due to the fact that the injured person has returned to work sooner as a result of the rehabilitation. The current auto insurance product does not look at rehabilitation process in this manner. Hopefully the future one will.

Reducing the cost of health care services and medical expenses: The cost of some health care services can be drastically reduced. Under the current plan, the policy can provide for the cost of 100% of health care services and medical expenses prescribed.

There is such a simple solution in reducing these costs. I request that this committee consider placing a small user fee on these out-of-pocket medical expenses. A user fee will add a financial stake on behalf of the user. I recommend a nominal fee of \$5 or \$10 for each health care treatment or medication prescribed. This fee could be reduced for the non-employed, the caregivers, the students and the seniors. This fee could also be waived for those severe cases that pass the threshold.

A fee would act as a safeguard. It is human nature to accept all that is offered free of charge. When we are asked to participate in the expense, no matter how small our participation, we question the effectiveness of this medical cost. Even myself, I go to chiropractors and what not, and I know that if I'm scheduled for five or 10 meetings within two weeks, I'm looking at \$70 out of my pocket. Right away I'll question, should I see my physician and get some medication? I'm saying that a lot of these costs involved could be drastically reduced if we look at a system that includes a small user fee.

With a small financial stake in these expenditures, the injured person would also ensure that rehabilitation people are efficient in keeping the true interest of returning the injured person back to their pre-accident condition.

It is now commonplace for the users of health insurance services to pay a user fee, and the public has grown to accept this. I believe this user fee would dramatically lower the medical expenses to the point that it would reflect a substantial savings in relation to the unnecessary medical treatments.

In conclusion I would just like to restate some of my points:

Other than principal caregivers and students, don't give weekly payments to injured non-earners.

Delete "psychological impairment" and add "psychological injury due to a physical injury sustained to the brain and/or nervous system."

For tort cases, rehabilitation costs should only be paid to a claimant if it is evident that the rehab was effective in reducing the length of the expected recovery.

I request that this committee consider placing a small user fee on those out-of-pocket medical expenses. I recommend a nominal \$5 or \$10 for each health care treatment or medication prescribed.

Please exclude contingency fees to lawyers in insurance litigation.

I truly believe that this new plan proposed will produce a product that will stabilize the cost of auto insurance. Thank you for listening to my views on this subject.

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Mr Martin: Thank you very much. You certainly gave the committee and Mr Sampson lots of food for thought here. I suppose I can't disagree with you on the principles of affordability, availability and understandability. I think that's crucial to any insurance system we have in place, particularly in today's society where we expect that people will have access to these vehicles.

However, in the area of affordability, through a presenter this morning and in reading the papers just in the last couple of days, I guess, it's become clear to us that under the present system the insurance industry is making a reasonable return on their investment. I think

the figure this morning was 8.5%, and we had some discussion about that with Mr Day, who was here.

I know that some of the discussion, or I guess a good part of the engine driving this discussion, is the question of affordability, both from the industry side and from the consumer side, and how we find a balance there, how we find a place that doesn't give everybody everything they want but gets us to a place where everybody can stay in the game. I would suggest to you, as Mr Day actually said this morning, that under the area of affordability we have something now that is getting us there. The struggle has been getting us there, and why at this point, as he said, do we need to throw the baby out with the bathwater and change the whole thing completely again for a third time? So I would ask you to maybe comment on that.

Mr Walz: Firstly, the percentage indicated in the profit margin also included the property insurance and all the other insurances tied in across the country, not just auto insurance. I understand from the records shown—I read something about two months ago where it actually costs approximately \$860 per vehicle just in claims costs. That for every vehicle, every private passenger vehicle, and that's not administration and all the other costs.

The only time I've seen rates come down actually was just near the end of OMPP, when for whatever reasons claims costs did come down and then we had a change shortly after that. That's the only time I've seen it come down.

I still think the current plan is too costly right now in that when we see the costs of each individual, the severity of each claim, the amount that we pay out per claim, especially under accident benefits, has gone up 30% to 40% or so in respect to prior cases.

I can't comment as far as profitability of the insurance markets. I'd like to see the figure. I do understand that it's actually a loss for auto, from the records I've been shown. I think, ballpark, about \$1.06 is paid out for every dollar taken in. That was probably about a year ago, and I realize we've had increases since then. So as far as auto insurance in Ontario, actually we're at a loss figure.

Mr Wettlaufer: Mr Walz, welcome to the committee. Thank you for coming here. As a former insurance adjuster, you've seen the best of both worlds, I guess. Were you an independent adjuster or a company adjuster?

Mr Walz: An independent adjuster.

Mr Wettlaufer: You were an independent adjuster. Good, because that relates to the question I want to ask.

On the medical treatment, the problems that you've brought out here are something that we've heard for the last two weeks: the uncoordinated medical treatment, the scheduling of services, the lack of joint treatment goal, duplicate diagnostic tests, conflicting treatment programs, doctor shopping. We also have case managers. Do you see that we have replaced what was considered to be an inefficient system of independent adjusters with perhaps an inefficient system of medical treatment?

Mr Walz: Again, speaking for adjusters in this area, I wouldn't say that they're inefficient. Actually, we have some very good people.

Mr Wettlaufer: I said perceived as.

Mr Walz: Okay. I think the problem right now is we have basically too many fingers in the pie. It seems that

there are the rehab people, the chiropractors. Somebody gets injured and it's a free-for-all because there are so many services available for them and then we get this overlap. Somebody needs to coordinate it, maybe from the claim source.

Mr Wettlaufer: An adjuster could serve.

Mr Walz: An adjuster could do that. Exactly.

Ms Castrilli: You have put a great deal in front of us. Unfortunately, I don't have the time that I would want to ask you all the questions. I will ask two quick questions. I seek the indulgence of the Chair on this. The first is that I totally agree that the main issue is affordability, and I wonder how you reconcile that with your statement that you think this draft legislation, should it be enacted, would stabilize rates when in fact the interpretation of stabilization of rates, according to the Insurance Bureau of Canada and Zurich, was somewhere between 7% and 12% a year.

Mr Walz: The way I see it, the current draft that we have before us would cut down claims costs in relation to the Bill 164 that we have now, so in that, and in our office—and again we're a large brokerage office—we have seen rates stabilize.

Ms Castrilli: But do you define stabilizing in the same way?

Mr Walz: I mean within 2% or 3% or 4%, as opposed to anything higher.

Ms Castrilli: So you disagree.

Mr Walz: Yes. We're looking for them to go down, but we haven't seen that.

Ms Castrilli: Explain to me why you think contingency fees would add anything to rates. I'm a lawyer and I don't understand why you think that would add anything to rates. It's not something that an insurer would pay, and if a person loses, in fact the lawyers get nothing.

Mr Walz: I just question the fact that if it was being settled out of court as opposed to going to court and the settlement is for what possibly the legal system finds to be low but the claimant wants to accept that—I'm not saying all lawyers; my brother's a lawyer as well, so he'll slap my hands for that—but there's a question of, what is the incentive there? Is it to get the utmost highest award? Because we do work in a system that if someone has an excessively high award, all of a sudden that becomes the norm and it just seems to climb and climb.

Ms Castrilli: I don't see how that affects rates, though, because that's payable by the individual, not the insurance company.

The Vice-Chair: Thank you, Mr Walz, for your presentation today.

JAMES BUSCH

The Vice-Chair: Our next deputation is Mr Jim Busch. Good afternoon. Welcome to the committee. Would you mind introducing yourself for the record, please, and then begin when you're ready.

Mr James Busch: Thank you, Mr Chairman. My name is James Busch. I'm a physiotherapist from Sudbury. My wife and I opened the first private practice north of Barrie some 10 years ago. Our facilities are all private physiotherapy, and approximately 12% of our caseload is made up by motor vehicle accident cases. I apologize for

the shortage in numbers of my topic today. I only brought 10 papers. I didn't realize there were going to be so many people here.

I really appreciate the opportunity to speak to this committee. There are several things that I believe I could go over in the proposed changes to the legislation. Many of them have been gone over and over again, as to some degree my topic. I'm going to spend my time on referral for profit in rehabilitation. I believe it's a large topic and becoming larger every day for both cost containment, accessibility and, unfortunately, fraud.

Referral for profit, whether it is by a health care provider—and I think another area that has been missed by some of the previous presenters, and that is our lawyers, and insurance companies are also involved in referral for profit—really takes advantage of the public's trust in them as people they look up to, whether it's their physician or the lawyer they're paying for, their physiotherapist or chiropractor, what have you.

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I really don't believe anyone should have to wonder why they're being referred for either a service or a product, and unfortunately, in today's system that occurs on a daily basis. For example, why should a patient have to wonder why they're being referred for medication, X-rays, labs or rehabilitation? Is it because the physician owns a facility or is it because they really have a problem? Conversely, if I treat a patient and I refer them for a back brace, they should never have to wonder whether or not they really need a back brace or if it's just because I told them to go down to the retail office or the store next door that I own that sells back braces and Obus Forne chairs and TENS machines and what have you.

Lawyers are getting into the business every day now, not quite as quickly as physicians, but one really wonders, does the lawyer really have the best interests of their client at heart or are they just trying to cash in on some major oversights over the last bit of legislation?

Insurance companies of late, especially those that have been coming up from the United States, some of the multinationals, are quickly getting into the field of rehabilitation, and interestingly enough, one of the largest firms, one that purports to be a medical management company to contain costs, is one of the highest billers of rehabilitation services under the current plan.

I really wonder why we continue to make the same mistakes over and over again that other jurisdictions have made. The United States has gone up and down and sideways with the problem of referral for profit. They've produced countless studies that show that in rehabilitation, which I'm going to veer off into now, the problems are, in the shortest way I can describe them, a decrease in the public's choice of facilities.

As I talk around the province to various people, they say, "How can bringing more people in, physicians opening up practices in your community, decrease the choice of the patient?" It's quite simple. The patients have, by and large, a tremendous amount of trust in their physician. Their physician tells them that this is a referral for a facility they own, and they think it's got to be the best place to go. If they don't think that, then they're worried if they don't go there, the physician may not

continue to give them the same type of care they had previously.

Given the unfair playing ground that creates, since many insurers still require referrals even though physiotherapists don't need to have a referral from a patient and they can walk in off the street, still 88% of the patients that we see in our facility come in from family physicians, and very quickly when a family physician opens up a facility, the physio-owned facility goes out of business. We're seeing that now, not yet on a daily basis but certainly on a monthly basis over the last couple of years.

We're not really worried about what happens to the other individuals, the other professionals in this legislation. However, one of the problems or one of the things that is of concern is accessibility, and certainly that will decrease accessibility.

The studies have also shown that there are decreases in patient care when we have referral-for-profit situations. The decreases in care occur largely in the most recent studies out of Florida, in that there are fewer registered physiotherapists treating the clients per patient in the facilities. The studies also show less time is spent per treatment with the physiotherapist.

The third thing is increased costs, and this committee is supposed to be—we hear a tremendous amount about costs in all phases of government, and certainly we're all getting real sick and tired of paying the insurance fees we're paying and we're wondering what we can possibly do to decrease those fees. Costs in a referral-for-profit situation have been shown in virtually every jurisdiction to do nothing but increase. The costs, of course, increase for various reasons, one of which is the decreased competition and the compliancy with the physician's wishes to go to the facility that they're referred to, that the physician owns.

Inappropriate referral or overreferral: Cases that really don't have to go for treatment are being sent for treatment. There are numerous examples of this in the literature. The state of California did a study showing that when physicians didn't have ownership in rehab facilities, they referred 30% of people with soft tissue injuries for treatment. That is almost exactly the same percentage we find in Ontario for the Workers' Compensation Board with the acute clinics, where no physicians have ownership—within a couple of per cent—27% to 32% over the last six years of people who are off work with soft tissue injuries are referred for treatment. We would expect that would be about right when we look at normal healing graphs.

In the state of California, when they reviewed this and found that treatments were increased by such a high percentage, they instituted a state law that said physicians were not allowed to bill workers' compensation insurers if they had ownership in rehab facilities. We also see increased numbers of treatments when we have referral for profit, and I really can't tell you why and neither can the researchers, but for some reason, if a physician owns a rehab facility, they seem to take longer to get better than if they don't own it.

Since many referral-for-profit facilities in Ontario only look at what we could call the cream of the crop, in other

words, they only look at treating extended health care patients or motor vehicle accident victims, and they don't look at treating workers' compensation, which is a much higher debtor and low fixed costs for treatment—not that I would advocate looking at some of the board's things as gospel—this drives the price up for both the Ministry of Health in the hospital system, increases the waiting lists and harms the injured worker, and drives the price up for employers.

If I might show you something that you've all seen over the last couple of days, and probably wish you wouldn't and certainly we would hope we'd never see them again, in every major paper across the province of Ontario—I know you've been to Thunder Bay; I'm sure they had it there as well—physicians are cited for fraud. CPSO has just told us that 100 physicians have been cited for fraud, most of which come from referral-for-profit facilities or in some way are linked to physiotherapy clinics that they have ownership in and/or get kickbacks from and/or charge excessive fees to.

In spite of the several ways the American physicians have found to increase fees and the cry and complaint from CPSO and OMA that physicians in Ontario, for God's sake, would never be like their brothers in the United States—and before this gets right out of hand, let me say that this is a very small percentage. CPSO tells us that 200 out of 25,000 physicians are the only ones who have registered to declare they have ownership, and they've cited 100 of them. So we find that the physicians who want to take advantage of this system, and according to CPSO are doing so in the hundreds of millions of dollars per year, are somehow managing to find a way under the current CPSO regulations.

If we look at referral for profit and we say it's causing increased prices, decreasing patients' choice and decreasing the care people are given, and we say what can we do about it—I see Mr Sampson has already answered this question to some of my colleagues earlier and I would like to take him somewhat to task on this. I think you're really sidestepping the issue, sir. To wait for the Ministry of Health, or more particularly, for CPSO to tell the Ministry of Health what they think they ought to do, I think is really irresponsible.

CPSO has decided that what they're going to do is they're going to let the few physicians who really are making a mess out of things, making all physicians look bad and really hurting the whole state of rehabilitation as we know it in the delivery system in this province, decide for themselves what they think the CPSO ought to do. I think the only thing we can do is stop referral for profit. I really think that if the minister is serious about decreasing costs, increasing availability and stopping fraud, referral for profit can't be left to the colleges, my college included.

1450

Perhaps I might take the time to read you what CPSO has decided they should ask next month to all their members and ask them to mark on a ballot:

"Current regulations permit physicians to refer their patients to diagnostic or therapeutic facilities in which the physician has an interest, as long as the physician discloses this interest to the patient and the college before

the service is performed. This is known as self-referral. Do you favour:

"(a) A new conflict-of-interest regulation banning self-referral in all circumstances.

"(b) A new conflict-of-interest regulation permitting self-referral based, as now, on disclosure, but also on medical necessity, quality assurance and outcomes."

By stuffing the ballot box with (b), the only possible answer anyone with half a brain would put down, CPSO really is setting the stage so that they can announce something that they've been saying privately for months and months over this issue, that we now have new conflict-of-interest guidelines that consist of both declaration and appropriateness of treatment. Right now, they can only get 200 physicians across the entire province to admit they've got something to do with rehabilitation, half of which are just under investigation.

CPSO claims that it's impossible to police prohibition on conflict of interest, and I submit to you that if it's impossible to police prohibition on conflict of interest, it sure as hell is impossible to police appropriateness of referral, when they can't even get the people to declare at this point in time.

I think the minister has a large problem on his hands and I believe the example that was put forth by the federal legislation in the United States may have some help for him.

First of all, we do not have to wait for the Minister of Health to make any declaration. I've been dealing with the Ministry of Health now for months and months and there's nothing going to come out of the Ministry of Health. The auto insurance act has every right, has certainly as much right to decide who they're going to pay for service as they do to tell us that they're going to accredit us. There should be no problem in stopping physicians from owning rehabilitation facilities—not from owning, but from accepting fees for motor vehicle accident insurance from facilities that they own.

This is what the Americans did in their federal legislation where they have said that physicians may not own and bill medicare for physiotherapy, occupational therapy, X-rays, medication and five or six other medical treatments. They didn't tell them they can't own them, they just can't bill medicare. If third-party payors want to continue to pay them, that's up to them.

Other things that can be done are outcome-based accreditation. I think you're well within the bounds of the ministry to do that. I would caution you to say that's certainly an area where the various colleges should be involved, but peer review should be taking place. Most insurance companies that are really active and working on this process today are already using some form of peer review when they review cases before they send them to DACs.

I think that allowing for earlier challenges by insurance companies, keeping in mind that we have to have the whole arbitration system to protect myself, a carrier of auto insurance, in case I get in an accident—but the insurance companies are paying for the treatment. If we're going to put any onus on them to do any monitoring to keep the fees down, then we've got to let them get involved at the beginning.

As a practitioner, I have no problem at all with an insurance company wanting to get from me an assessment and an individual written plan as to what I'm planning to do with that individual and to be able to look at that as I'm treating them and make sure that what I'm doing is appropriate and that I'm not forever treating someone who isn't showing any progress. Why shouldn't they be able to have a look at that? They're the ones paying. You, sir, as an individual would want that if you were paying out of your pocket. You'd want to see progress. Certainly anyone who's paying should have the same right.

Lastly, I would say that I do believe, as CPSO so clearly stated in the paper it released to the press, that a large part of the fraud problem, which seems to be growing, arises from and exists partly as a result of the way the provincial no-fault auto insurance scheme has been established and administered. There's too damn much money out there for rehabilitation. When people need it, there should be a process in place that they get all the treatment that is required to help them out, to get as close as they can to the state they were at pre-accident, but when you start to put these absolutely absurd numbers out there and make them available, it just sets the stage for people to take advantage of the system.

In Sudbury, our average fee in 1995 for some 239 motor vehicle accident cases was \$1,503. We have currently a physician group that wants to come in. Their pro forma calls for between \$4,000 and \$5,000 for the same cases and they're saying that they have a terrific service and that they're very cost-effective and very well received by insurers in southern Ontario where they have similar facilities. The research that I've done through the private practice association shows that in fact most insurers aren't even going to shake their head at between \$4,000 and \$5,000. I think it's absurd. We had two cases out of 238 cases last year that went over \$4,000. Both people had their spleens removed and had multiple injuries in a car accident. Thank you.

Mr Spina: Mr Busch, thanks for the presentation. It was interesting to note that a number of the quotes that you gave us were right out of the analysis of some of the discussions that went on. I guess what you're getting at is that even though the College of Physicians and Surgeons right now claims they can control the abuse of the system through that self-referral, it is not really happening to the extent that it could. Did I understand that correctly?

Mr Busch: Absolutely.

Mr Spina: Your approach and your method of addressing this is that the Ministry of Health should not be addressing it but we should be addressing it under the Insurance Act?

Mr Busch: That's correct. I think the Ministry of Health, as in my college, CPSO and all the other colleges under RHPA, is responsible to set firm guidelines on referral for profit, self-referral, conflict-of-interest guidelines. However, the Insurance Act is not bound by the Ministry of Health or any of the colleges when they write their act.

Mr Spina: But if we change the Insurance Act, are they bound by the Insurance Act?

Mr Busch: They're bound by the Insurance Act if you're the payor and you're just not going to pay for facilities that are self-referring—end of discussion. WCB currently has different rules and regulations than the Ministry of Health governing health.

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Mr Spina: If we took it a step further, if we have a victim who has been in a motor vehicle accident and we need someone, an individual, a body, whatever, to take the responsibility for treatment intervention, for a treatment plan, where do you see that source fitting in?

Mr Busch: Where's your question?

Mr Spina: Who would make that decision? Who would do that assessment, in your opinion? Right now, it seems to be the insurance adjuster or the doctor who seems to be making the decision as to the amount of rehab that the patient has, that the victim has, and we're seeing that a lot of the rehab costs are out of control, as you indicated. So how can we control that? Who would make that decision? Who should be making the recommendations?

Mr Busch: First of all, let's get a couple of things straight: By stopping physicians from owning and referring to rehabilitation clinics, you don't change any part of the process except referral for profit. Physicians would still continue to refer. I expect next year 88% of my patients will still come from physicians; 10% will come from employers and insurers, as they do this year; and about 2% of the people will be walk-ins.

Currently, the way the system works is that when physicians refer someone to you, they also get to act as one of the buffers, as their patient advocate, if you will, but also as a check in the system to make sure what I'm doing works. But what I'm saying is that if we got rid of referral for profit, you still have to make sure that what I do works. The patient went in. He's not going to the physician clinic now that we could have seen and are seeing, by the way, multiple. This is two years they've been in this game, and what we've seen to date in the process is that we still require an accreditation system, an auditing system, a peer review system that goes in place and lets insurers decide and put lists together, if you will, and decide whether or not I'm effective. If the guy across the street is more effective, he's going to get the work.

Mr Spina: But if you and I are each physicians and we each have a clinic, what's to stop us from my referring to you and your referring to me?

Mr Busch: Referring to each other. This is an argument that CPSO uses and there are some examples of this system. I believe that the auto insurance act probably oversteps their bounds when they start to look at, or do overstep their bounds if they want to look at, types of penalties that they can put on me or on a physician in regard to conflict of interest or not fulfilling the duties of my regulatory board.

However, if we make laws, all of our laws, for the few individuals who are going to screw the system, who are going to take advantage and go underground in the system, then all of us should walk around with flak jackets on. The majority of individuals do not set out to take advantage of the system, and if we encourage laws and severe penalties to take place through the Minister of

Health—which we do not hold much hope for—then maybe we can catch some of those people as well.

But the majority of individuals, the majority of physicians are very dedicated health care providers. Right now, they feel that they're being squeezed and, any chance they can, they're trying to make some more money. Stop paying them. Very few of them are going to play games with you.

Ms Castrilli: Thank you very much, Mr Busch. You certainly make your points very clearly. I want to make sure I understand. I don't think there's any quibble that conflict of interest is a huge problem, but in many professions conflict of interest is handled by disclosure rather than outright prohibition. Why do you think that a disclosure provision with stiff penalties might not work?

Mr Busch: The reason I think it won't work is because it hasn't worked. If we continue to try to make the same mistakes that everyone else has made—it has never worked in the United States. The first thing they tried was disclosure. Where they tried disclosure in the States, they had a decreasing choice for the patients, an increase in costs and a decrease in patient care. It hasn't worked. Disclosure in the province of Ontario has been the law since January 1, 1994; 200 out of 25,000 physicians have disclosed that they have ownership. Yesterday it was declared by CPSO that 50% of those physicians are under investigation. I don't think it's working.

Ms Castrilli: I suppose the fact that they're under investigation is a good thing in any event. But obviously you don't think the stiff penalties will do it; it hasn't worked. The studies you cite, are they studies that you could share with the committee?

Mr Busch: Certainly. If the committee would like copies of studies, they can be made available.

Ms Castrilli: I think that would be very helpful to us.

Mr Busch: The ministry has them. I keep calling him Minister Sampson, but the parliamentary assistant—

Ms Castrilli: I'm sure he loved it.

Mr Sampson: Thank you for the promotion.

Ms Castrilli: I saw you smiling and I got going on it and couldn't get it turned off. Do you have the studies?

Mr Sampson: We have some of the studies and we've got a copy of the news release of yesterday from the college.

Mr Busch: Yes, it's a seven- or eight-page release.

Mr Sampson: it's discouraging.

Ms Castrilli: I wonder if that could be circulated, because I have not seen that release.

Mr Sampson: We'll table it.

Ms Castrilli: That would be useful.

You mention two other recommendations at the end that we really haven't talked about. One is "an outcome-based accreditation system." I wondered what you really meant by that. The other point is "earlier challenges by insurance companies." We've had evidence that said that insurance companies now challenge anywhere from two to six weeks from the accident. That's not your experience, I take it.

Mr Busch: In fact, they haven't. In the current legislation they can challenge—I forget a time frame, but at \$2,000 worth of billings. Under the prosed legislation, they can challenge at six weeks or 15 treatments. They

don't have to, but they can. I applaud any earlier challenge. I think that they're paying the bill, and everyone that is supplying service ought to know that from day one—not from the 15th treatment, not from the sixth week, but from day one—someone's actually watching.

Ms Castrilli: How early is early? How early would you say?

Mr Busch: Day one. Why shouldn't they? If I'm treating you and you have no insurance and you're paying me cash, you want to know day one what I'm doing to you, don't you? I certainly do. That's the way I spend my money. Why shouldn't the insurance company be able to know day one? If it's okay to have a look or to challenge after 15 treatments, why isn't it at the beginning? If I could bring someone in and assess them and start them on a treatment program and really there's not a damn thing wrong with them and they can't challenge me for 15 days, and probably they're not even going to see it at that point in time, what good does that do? If they're trying to make a living as insurers and trying to keep the costs down so my auto insurance doesn't increase again next year, why shouldn't they look at day one?

Ms Castrilli: Other professionals have told us that in fact the efficacy of a treatment can't be determined until further down the line.

Mr Busch: No, but treatment protocol can. If I was reviewing your case, if I was an insurer and reviewing your case, I want to say: "What did that physiotherapist find? What did he find in his examination? Did he do one, to start with? What did he find in the examination? What treatment protocol did he put out and how long did he say it was going to take?"

Mr Martin: Thank you for coming today and challenging us in the way you have. Certainly this is an issue that needs to be dealt with and I'm not sure whether this piece of legislation in fact does that. I know that there is tremendous emphasis put by this government on catching those who would defraud the system on every level, most particularly, though, at the level of the victim and the consumer. It seems to me from what you've said here, and backed up by statements by others around this issue, where it's suggested that the frequency of treatment is about 40% higher and costs 30% to 40% more for patients at a clinic owned by the referring physician, and that patients were also 50% more likely to be referred for therapy if the referring physician has a financial interest in the therapy clinic—my concern is that patients get the treatment they need and that they get it in a way that allows the larger system to continue to be able to provide for that treatment.

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I don't know; maybe I'm getting it wrong. This is my only day on the committee so far, but it seems to me that everything I read is about capping stuff, that if you do that, somehow you'll do away with the fraud, somehow you'll change the system so it becomes more affordable and available and all those kinds of things. I think you have taken the lid off a Pandora's box here and suggested that maybe there are more sophisticated, complicated things that need to be dealt with and that legislation that simply puts caps on things isn't going to do it.

Mr Busch: I'd like to respond that my concern is that patients get the care they need too, and if I don't do a good job as a private practitioner they're going to the facility that is currently across the street from me—and rightly so; they should.

What I believe is that the more-than-generous caps in the current Bill 164 as well as the more-than-generous provision made in the revision of 164 just aren't necessary. Most soft tissue injury can be dealt with for a lot less money. My concern really is that people do get the treatment they need. If I were to say, "Our experience, guys, is \$1500; limit it to \$1,500"—quite frankly, that's pretty good. I don't have any problem, with what I'm charging, let me tell you. The fellows that are moving in right now and are charging 300% more than me are going to do real well. They've already told all their investors that they're going to make 185% in the first year.

But if we leave it at that level, what happens to those people who did get better but it cost \$4,000, the two people who did go over the \$4,000 mark? What about the people who did get better and go back who were included in that \$1,500 average, who were at \$3,000 or \$2,500? What we have to look at is saying: "Well, Mr Busch, if you're going to treat people, we're going to put on a very reasonable cap that's going to cover the majority of people you see for soft tissue injury, and if someone does need more treatment, prove it to us. Show us objective signs of what's wrong with the individual and show us objective signs that they are in fact getting better." It's very possible to have someone in the facility who truly has something physically wrong with them, and you can have them there for five years and they're not going to get any better because they've already plateaued.

Mr Martin: Is there anything in this bill at this point that will get us there?

Mr Busch: No.

Mr Martin: And will what you've suggested by way of change, if accepted and implemented, get us there?

Mr Busch: I think it needs more work to get us there, but peer review and earlier monitoring will go a long way to getting us there. If I know someone's watching me from day one, I'm going to certainly make sure I don't get my hand slapped.

Mr Martin: Mr Chair, can I put a question on the table for the parliamentary assistant and perhaps his staff? What efforts have been made to date to get a handle on the reference of this morning that a whole lot of insurance policies, including OHIP, are crossing over each other and that in some instances we as a government insurance industry are getting hit maybe two or three times, when if you could determine there was one appropriate place to do it that would cut back on the cost to a whole lot of people? Is there anything being done to disentangle all that so we can figure out where the most appropriate place is for people to go and what the most appropriate vehicle is to be paying for that, and in that way maybe get a handle on the cost of insurance? Could you also tell me if anything's being done at this point to deal with the issue that's been raised by the presenter in front of us now, and can we expect that something will come at us in the not too distant future to respond to some of that?

Mr Sampson: I'll table the first question because I think it needs some clarification, and I don't want to delay subsequent presenters. Perhaps we can deal with that during some of our down time so as to be going forward, because I'm not exactly certain you understand who pays what and the sequence of events and—

Mr Martin: No, I'm not.

Mr Sampson: So let's table that one, if I can. The second one, as it relates to the conflict of interest and the profit from referral—we're not finished our hearings yet, but we've heard things like outcome-based accreditation processes etc. That could well be under the authority of this DAC committee that's been established and reports to the minister, not to the OIC, under the proposed legislation. There are other things we think that DAC committee can do to deal with making sure, as the deputant before us was saying, that dollars are spent effectively and efficiently and not just spent for the sake of spending them. That goes to the point of establishing fee schedules, establishing treatment protocols for various injuries, and that committee could also be empowered to limit the 15 visits to two or three or six or whatever the research says is appropriate for various injuries, by the way, which I think would go a long way to deal with the item raised by the deputant. We could also have that committee perform such things as peer reviews or outcome accreditation or whatever form to deal with this issue of, is the person performing the service, providing a service for the dollars being spent?

Mr Busch: I would just make one caution. I read James Daw's article on Sunday where you made mention of accreditation. Be very careful when you start to get into looking at best treatment guidelines. In the perfect world, that would be lovely. They haven't been made. The current studies out there are very deficient. Enough studies in the health care field, especially in rehabilitation, just have not occurred. If we start to look at setting guidelines from information currently out there, you're going to very much restrict the treatment. However, if you start to look at objective findings and changes during treatment, and that when changes during treatment quit, you're done, then you're on much stronger ground for the majority of people today. Hopefully, 10 years from now we'll have those better guidelines.

The Chair: Thank you very much, Mr Busch. We appreciate your presentation to the committee today.

GLEN YATES

The Chair: We now welcome Dr Glen Yates. We have 20 minutes to spend together.

Dr Glen Yates: I apologize to the honourable members. Unfortunately, I didn't hear I was supposed to bring 30 copies of things. I've left a full copy, with appendices, with Mr Carrozza, and hopefully you'll be getting that very shortly. Bear with me. I'll try to make it understandable for everyone.

I am a duly qualified chiropractor in private practice in Sault Ste Marie. I practise in partnership with my wife, who is also a chiropractor. We have excellent relationships with other health practitioners in our community, and we find there's frequent referral of patients between us and our medical colleagues. I see patients who have

been injured in an automobile accident every day, and they represent approximately 20% of my practice. This is my sixth year in practice.

I'm a little disturbed by news accounts of evidence from insurers and their experts saying the present draft legislation would produce unacceptable medical and rehabilitation costs. I'd like to give some simple, real figures to encourage clear thinking on the issues. These come from a May 1995 report from Canada Life Casualty Insurance Co entitled *A Review of Fees Charged by Health Care Practitioners*, a copy of which I've left with the standing committee.

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My second topic is, are current costs the problem, and if so, what costs? The study by Canada Life relates to data on auto accident victims insured by that company and seen in the greater Metropolitan area in March-April 1995 by chiropractors, physiotherapists, massage therapists, and family physicians and/or psychiatrists-psychologists. It was a random sample of 250 files studied. Attached in my package is a summary of the chiropractic treatments, which is in appendix A. Roughly 43%, or 108 patients of the sample group of 250, chose chiropractic care. As can be seen—I just bought a brand-new colour cartridge for my computer so I can make colour things. I'll pass this around, if you'll bear with me. Pardon the protocol, people. It just gives a little highlight to what I'm saying.

As you can see on the chart, 23.1% received less than 10 treatments; 57.4% received less than 20 treatments; 73.1% received less than 30 treatments. All other treatment frequencies are less than 5%. These cases with longer-term care will involve more serious injuries, reinjuries, and in some instances, I suspect, overtreatment.

The Canada Life report lists an average initial consultation fee of \$65 and an average treatment fee of \$28. There are no data collected on the costs of X-ray examinations, which would have been ordered in some cases. Assume the following total cost for the patient who received 29 treatments, remembering that most patients received less than 20 treatments: initial examination \$65; diagnostic X-rays, for argument's sake, we'll say \$35; treatments, 29 times \$28, would be \$812; the report fee is \$75 for a standard report. That brings the total to \$987. In summary, chiropractic care generally costs less than \$1,000. This compares with, for example, management in large rehabilitation multi-disciplinary clinics, with several concurrent providers, which will often cost in excess of \$5,000. Common fees are approximately \$3,000 for a case manager, and costs of \$1,500 to \$2,500 when a case is reviewed in a designated assessment centre.

I submit that this is not sufficient to say that runaway medical and rehabilitation costs are an unacceptable problem. Different areas must be seen separately for what they are. Amendments to the law now should encourage effective and cost-effective management. The Quebec task force report and the new insurance commission guideline dated February 15, 1996, affirm the effectiveness of chiropractic management based on activation and treatment of manipulation, mobilization, postural advice and simple exercise. The above figures demonstrate cost-effectiveness, I daresay along with such studies as the

Menga report with the Ministry of Health, which I believe most are familiar with.

I now turn to the legislation. Does the proposed current legislation generate unacceptable costs, as alleged by the insurance industry?

(a) With respect to medical and rehabilitation benefits under the proposed draft legislation, I note that "medical benefits" refers to health care, including what health professionals commonly would call rehabilitation. "Rehabilitation" refers to social and vocational rehabilitation.

(b) Within the first term, "medical or health care benefits," everything is subject to a treatment plan. The one limited exception is that relating to chiropractic and physiotherapy services, found in subsection 42(6) of the proposed SABS.

(c) That exception provides for a maximum of 15 treatments. The approximate cost of chiropractic services, using the data from the Canada Life summary and extrapolated to this case would be initial exam, including X-rays, of approximately \$100; the 15 treatments times \$28, \$420; and a treatment plan and reporting fees of, say, \$100. That would bring the total to \$620 under the new proposed legislation. And in my office currently in northern Ontario, we don't have the option of charging as much—our patients won't pay that—so my fees would be less; in our office, \$500 would be the more accurate cost.

(d) I think everyone can agree that there is nothing in subsection 42(6) that is going to drive up insurance costs. As I understand it, with the various new controls being introduced by the government, including treatment plans and streamlined DAC systems, there us nothing in the draft legislation that provides real cause for concern.

The Ontario Chiropractic Association, of which I'm an executive officer, the secretary-treasurer, has suggested in its submission an eight-week period, as is common in chiropractic practice for, say, a grade 2 or grade 3 whiplash injury. This would involve three treatments per week for the first four weeks and two treatments a week for the second four weeks, a total of 20 visits. That represents a total cost of \$660. Isn't that an acceptable cost for a generally effective treatment protocol? How significant is this cost to insurers and how does it compare with the costs of other providers of case managers, of administration, of legal advice?

In summary, for myself, (1) it is appropriate that the draft legislation provides for acute chiropractic care without the insurer having the right to veto or challenge this. Such care is the most effective and cost-effective on the evidence and is not a source of significant cost to the insurance company.

(2) The acute care period specified in subsection 42(6) of SABS should be changed from six weeks from the time of accident to eight weeks from the commencement of care. The figure of 15 treatments should be deleted. This would allow for a period of care, as shown in the Canada Life study, which is consistent with my clinical experience and in which most mild to moderate soft-tissue injuries will have resolved to the satisfaction of all parties. The various provisions in the draft legislation, including treatment plans, modified DACs, give appropriate cost protection for other health care benefits.

If the insurance industry needs further cost controls, it is certainly not in the area of chiropractic care. Thank you very much for your time. I appreciate your time.

Mr Crozier: Thank you, Dr Yates. Just two things, I think, that you can help me be more clear on. I didn't have your presentation in front of me. You said something to the effect—and I will paraphrase it and then perhaps you can explain it for me. You gave an explanation of chiropractors as compared to concurrent providers.

Dr Yates: Correct.

Mr Crozier: Was the context that it cost less money, and were you also saying that, in your opinion, it's better and, if so, how can you make a general statement to that effect?

Dr Yates: Fair enough. Better? I'm not going to make any comment on. That's opening a nasty can of worms and in far too little time here.

Mr Crozier: Those are my words.

Dr Yates: What I was comparing to is a single practitioner out in a chiropractic practice. When we are lumped into this big rehabilitation world, I as a chiropractic practitioner here in the Sault—if someone comes in to see me with, say, a class 2, class 3, via the Quebec study, whiplash injury, this is what my protocol would be, here's what my expected fees would be in the \$600, \$500 range.

In comparison, when we look at the fees, if that same patient had gone to a large, multidisciplinary, multi-concurrent practitioner setting where you're seeing a whole broad range of practitioners all at the same time, I think the effectiveness of the two clinics is probably extremely good, but I'm just looking at the cost if someone walks into my office and I treat them and someone walks into a huge, multidisciplinary centre and they're treated, and that's all I'm comparing.

Mr Crozier: If you, as a chiropractor, would not be able to provide the health care that someone in the large, multidisciplinary setting would be, you'd refer them?

Dr Yates: Certainly.

Mr Crozier: I was interested in your comparison of costs of treatments and when you made the comment that in, say, Sault Ste Marie, for example, where you may not be able to charge the fees that they can in the big city, does that mean you would charge the same lower fee for insurers as you would for an individual? Like there wouldn't be a two-tier—

Dr Yates: No, we charge the exact same—whether that comes in.

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Mr Crozier: That's very honourable and reasonable.

Dr Yates: As an aside, I guess that's the second part of that Canada Life study. You might want to go through the study. It does look at the differing cost factors that way and chiropractors came out as—if you walked into a chiropractic office, they come out very similarly; it's almost identical. Were there a few who were maybe bad apples in the crowd? Sure. You probably get them in every profession, but the chiropractors came out very, very favourably in that.

Mr Martin: Thank you for an informative and interesting presentation. I don't see the difficulty around this table being whether the proper place for people to go is

the doctor or the chiropractor or the physiotherapist. I think the concern here is that when people get hurt in an accident, they get to somebody who's going to help them get over their injuries and get back to as normal a life pattern as is absolutely possible. I think it's been documented by enough people to have us believe that there's some difficulty that the system doesn't always work the way it should, it doesn't flow the way we'd like it to.

I spoke to a young man here not so long ago who sat and watched for a bit today and who was somewhat chagrined by the lack of discussion around the question of how we in fact get somebody from the accident to your table: like the very difficult process of determining, first of all, what the real injuries are; are they real or imagined? Who's going to pay for them and how much? Is there a cap on that? and all of that kind of thing. I guess for me, each of the groups that comes forward, I think, makes a very valid case around the question of the principle here being accessibility and affordability and all those kinds of things.

Given your own experience with having people come to your office out of an accident situation and some of the frustration that they've obviously experienced on the way to your office and afterwards, to make sure they get all they need to get to the point where they are now able to participate again, will this piece of legislation help? Will it be helpful, will it just do nothing or will it be in some way a deterrent to that in fact happening?

Dr Yates: I can only speak to that myself as a chiropractic physician. From that point of view, when a patient walks into my office, as I've stated already in my brief, the issue of eight weeks of care, a commencement of care, is a big issue for us in the sense that if someone who has an accessibility problem—they've already utilized their 15 weeks and they sat at home with a heat pack on their neck and nothing happened and then they decided, "Look, I've got to do something here," and so they show up at my office, yet most of that within those 15 visits, if it's past a point of say so many weeks down the road, if it's past six weeks, suddenly they no longer have as accessible a time to my office. As long as it's commencement of care, once they walk into my office and they say: "Glen, I really need you to help me with my problem. I haven't done anything," I say: "Yes, you do need some treatment on your neck or on your back or on whatever. Yes, let's set up a treatment plan. Let's send that off to the insurance people right away." So we'll send the treatment plan off, but I need that eight-week time where I can show some cost-effective outcome-based goal, time-limited plans—

Mr Martin: Will you be able to do that within the context of this package here?

Dr Yates: If those changes I've suggested come in, yes, very much so.

The Chair: Thank you, Dr Yates, for your presentation to us today. We appreciate your input.

Mr Tim Hudak (Niagara South): Does the government not get to ask a question?

The Chair: Oh, wait a minute. I'm sorry. My apologies. I tend to glide over those who give me the most problems. Could we move to the government side, please,

Mr Arnott. If you wouldn't mind answering a few very simple questions.

Mr Ted Arnott (Wellington): I thought it was pretty quiet here today. There haven't been too many problems.

Thank you, Dr Yates, for your presentation, for extending the benefit of your expertise to this committee. It's very helpful in our deliberations, not only your perspective as a chiropractor in Sault Ste Marie, but also your involvement with the Ontario Chiropractic Association.

What this committee of course is grappling with is trying to find an appropriate balance to change the rules of auto insurance which will allow a reasonable level of premiums that people can afford, and also ensure that the victims of auto accidents are fairly compensated. I wondered about your final sentence and I thought I heard you say that there's absolutely no need for any containment of the cost of chiropractic service relative to auto insurance. Did I hear you correctly on that?

Dr Yates: No.

Mr Arnott: Your final statement in your presentation. I'm sorry, I guess you don't have a written brief.

Dr Yates: Let me just make sure. Yes, I was just saying, if the insurance industry needs further cost controls, it is certainly not in the area of chiropractic care. As you can see, if you have the brief in front of you yet, on the last page I've included a much fancier table, a graph that you can see that certainly our costs are not—if you add it up, 75% of the chiropractors. Are there a few who need their wrists slapped? I'm sure there are. I'm sure all practitioners have theirs that need a little extra payment on the Benz that month or something, so yes.

Mr Arnott: Okay. Thank you.

The Chair: And again, Dr Yates, thank you very much for your presentation to us.

DAVID TIER

The Chair: If we could now move to our next deputy, David Tier. Welcome to the committee.

Mr David Tier: Thank you very much for the opportunity to speak to you today regarding proposed legislation for automobile insurance. In gratitude for the opportunity, I promise to be very brief.

My name is David Tier. I have been a resident of Sault Ste Marie for 53 years and I'm currently employed at Algoma Steel as a senior—with emphasis on the senior—programmer analyst. This past January marked my 34th year with Algoma where I've spent all but one year of my working life.

On August 21, 1994, I was involved in a vehicle accident that resulted in severe injuries to my left leg. For a period of three to four weeks, doctors tried to reconstruct and save the damaged limb. However, tissue examination and reconstructive surgery caused doctors to recommend consultation at Toronto Western and there doctors confirmed that the chances for saving the limb, even part of the limb below the knee, would involve operations and many of them over the next several years and the chances were still slim. Therefore, I underwent an above-the-knee amputation on September 16.

After returning to the Sault, I underwent a minor adjustment of the limb before returning to work at Algoma Steel. In December 1994, I received a temporary gait-training prosthetic which I wore until June 1995, when I travelled to Sunnybrook and was fitted for the prosthetic I wear today. I offer this to you as possible reasons why I may be here today.

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I am a consumer. You are here today because you are considering changes to the legislation governing automobile insurance for Ontario, the fourth change to car insurance, as I understand it, in six years. I am here today because I have experienced injuries in an automobile collision and would like to offer for your consideration my perspective on some of the proposed changes.

First of all, I'd like to assure you that I have no grievance here. I have been extremely fortunate in that my employer and my line of work have afforded me the opportunity to return to work with no loss of income. In addition, my insurance company, the Co-operators, has been very helpful in settling any bills or problems that I may have had following from my amputation. However, since the accident, I find myself with a new-found interest in the effects of legislation such as this on people injured in vehicle accidents. I would like to offer you the following five points for your consideration:

(1) Loss-of-income restriction: I have been advised that I was injured under Bill 164. Actually, that's incorrect. My lawyer keeps telling me I was injured under Bill 164; I say I was injured under a car. Bill 164 was the legislation in effect when I was injured. I understand that this bill limits a person's right to compensation for loss of income should he return to work and subsequently find that he cannot continue due to injury sustained from the original accident.

I must stress again, this is not my case. One of the surgeons who worked on my leg feels that I may develop spinal or back problems due to the uneven gait of walking on a prosthetic, but even if that occurs, I will be eligible for a full pension in a matter of a year. However, if I were under 50 and had returned to work before I found out I couldn't continue due to back problems, the loss of income could be substantial. Early retirement could impose a severe financial loss. In our society today, finding employment for anyone, let alone a middle-aged man with a prosthetic and back problems, would be difficult.

So why should I not be able to litigate the loss if there was shown to be one? This type of rule, it seems to me, discourages a person from returning to work if there is any chance that he may later have problems from the original event. Better he should not return at all and sue for damages for loss of wages to begin with than return to work and risk loss later. Surely we can devise a rule that encourages people to return to work. It's better for the employer, it's better for the insurance company and, most of all, it's better for me.

(2) The deductible: I understand that a ceiling is being considered for a deductible limit which your total claim must exceed before proceeding with litigation. I assume this would be to discourage nuisance suits. This is understandable, but when a claim exceeds that limit and

can be proven in court, why not waive the limit? From the point of view of one who has been there, I can assure you that the costs are real. There are things that you can plan for and things that you cannot foresee. If a claim is made in excess of the limit and is substantiated in court, then it should be allowed in full. The value of the deductible was fulfilled when it screened out the lesser suits.

(3) Net income restriction: I understand that the new law will restrict compensation to 85% of net income. I'm not sure that I fully understand the thrust of this restriction. If the intent is to simplify by having one rule to cover everything, that's a worthy goal. But people are individuals and individual circumstances may not mesh with the simplicity of 85% of net. Consider that a person may be self-employed and attempting to build a business and have little net, or a student who may possibly have no net. This restriction could be excessively harsh on such an individual. The amount should be for potential income and adjudicated by the courts. If I have a case that can be sustained in court, why should there be a lowering of the amount that the court has accepted? It seems like a hidden tax after net income.

(4) Mandatory structured payments: I was told that the committee is considering a mandatory structured payment schedule of any settlement claim. I'm going to ask you why. The trauma involved in the aftermath of a serious car accident can be life-altering. A person can find themselves having to completely change their lifestyle and their choices. While structured payments may be perfectly appropriate for some, the ability to choose a lump sum payment may be completely appropriate for others.

I offer as an example the commutations that are acceptable for the Workers' Compensation Board. While they go for structured payments, you can obtain a commutation. Possibly a person is choosing a new line of work and wishes to establish the business and it's enough to get him off the ground. The monies involved in a settlement may be the financial vehicle for that person to make the transition from dependency to a productive person in society again. To take away the right to choose lump sum payments demeans the injured Ontarian making the choice for him as though he cannot select what is best for him. The legislation should help, not hinder, his transition.

(5) Designated assessment centres: I haven't seen much of the new legislation, I've just seen it in point form a couple of places, and I read with interest that a new, independent committee will be set up to oversee the designated assessment centres or DACs. I applaud the effort to ensure that the DACs remain independent. It is important that they provide neutral, third-party opinions in cases of benefit disputes between insurers and claimants. But it must be difficult for the DACs to remain independent when they receive their funding directly from the insurer. As I understand it, if the insurer does not ask for them, they are out of a job. Therefore, there must be pressure on the DAC to satisfy the customer—the insurer, not necessarily the injured. Therefore, there may be some difficulty in accepting this as a completely neutral, independent, third-party opinion. I suggest that this new committee examine ways of moving the funding from

individual insurers to arm's length with the DACs, some method of removing it one step.

In conclusion—I told you I'd be brief—I'd like to leave you with one central thought. I appreciate and I applaud your efforts to achieve stabilization of premiums for automobile insurance in Ontario. However, I urge you to remember that the reason for the premiums is the protection of the injured parties and, as an injured party, I urge you to please test your decisions against that central mission.

Once again, I'd like to thank the members of the committee for listening to what I have to say. I appreciate the opportunity to give you input from someone who learned a little more than he ever wished to know about automobile insurance. I am going to assure you once again that I've been fortunate with my employer and with my insurance company and I have no beef. I only offer my observations in an attempt to make good legislation. Thank you.

The Chair: Mr Tier, we thank you for a most thoughtful and well-organized presentation.

Mr Tier: Mr Martin, I apologize for wearing my most conservative tie today.

Mr Martin: That's okay; no offence taken.

Mr Spina: You don't have to apologize; we don't mind.

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Mr Martin: There are more of them.

I want to thank you for coming today and making what was indeed a very focused and helpful presentation. You certainly present an interesting perspective and one that I hope will be helpful to Mr Sampson as he struggles in his role of taking the lead on this new attempt to make insurance available to all, affordable by all, but in the end—and you stressed this at the end of your presentation and it certainly is my biggest concern—helpful to those who find themselves in the unfortunate circumstance of having had an accident, where they need to be made better and in turn rehabilitated so that they can get back to work or get on with their life and contribute and participate in the communities in the way we know all of them do.

I'm a little anxious and nervous around this, given that a lot of the discussion seems to be more on the issue of fraud and people abusing the system and not using the system appropriately and perhaps maybe taking advantage of the system as opposed to how we put in place a system that actually in fact in the end works. There seems to be on a very simple level, so that I can understand it, a bit of a tradeoff happening here. We've seen, in the last five to 10 years, two new systems rolled out to try to manage a ballooning premium cost in the insurance industry and to work with the industry itself to get a handle on the cost to it and to somehow find a balance in the middle. Certainly, one of the factors initially was the question of lawsuits and the cost of lawsuits and the size of awards that were made in some instances that impacted then on the whole system.

At one point we took that away altogether and then we introduced partial opportunity, and now it seems this government is wanting to open that up a bit more and allow for more opportunity for people to go to the courts and get some satisfaction there. But they're trading that

off because they know that it's going to cost and that the industry itself is not going to be really happy about that, because it affects its bottom line. They're trading that off against the levels of compensation that were being afforded under the previous two attempts to reform the system and to bring it down so that those who in the end either can't afford to or choose not to go to the courts, this is what you will—particularly if you've been damaged in a way that does not allow you to get back into the work force again and become gainfully employed. So it limits you to a certain level that—

The Chair: Was there a question, Mr Martin?

Mr Martin: Yes. The question is, if you had the choice to make re those two realities, from your experience which one would you choose?

Mr Tier: I'd have to go back to work. If that was the question.

Mr Martin: No, the question is whether you would support higher amounts of money for those who maybe can't go back to work because they're not well enough to go back to work, or allowing for more opportunity to go to the courts and sue for more.

Mr Tier: One of the problems with making rules, Mr Martin, is that the rules won't encompass everyone. People are individuals out there. So when we try to put all the rules into the legislation, what happens is people get cut out of the process, people get left to the side. The rule fits the majority or the rule fits down the middle. I feel that by going back to the courts you have a place there for adjudication. It's not easy. It's not as though you're going to go in there and say, "This is what I want," and you are going to receive that. You have to prove the case in court. I feel that when it comes to individual cases, it's a good place to go to have them adjudicated rather than rely on rules that never performed beforehand.

Mr Wettlaufer: Mr Tier, thank you very much for your presentation. You raised a couple of interesting points, one of which is the waiving of the deductible. It's interesting; it really is. Another one you talk about is the commutations of the Workers' Compensation Board pension plan. I was just wondering if you knew what percentage of workers' comp pensions are commuted.

Mr Tier: No, I do not. I just know of one or two cases where the lawyer operating for the person—one case was a man who ended up being a double amputee. He lost the one leg and then they couldn't save the other and he lost that too. There was no hope for him going back to his original place of employment. Workers' compensation was willing to pay him X amount a month, which meant that basically he stayed in the same state. His lawyer applied and won a commutation. The commutation allowed that man to open a woodworking shop and it changed that man's lifestyle. It changed his whole approach in that he then felt productive. I think most of us, given the opportunity, would like to have a job where we feel productive. I certainly do.

From my own experience, when I got back from the hospital and approached Algoma to return to work, they were a little nervous about a man with one leg coming back inside the plant. So they arranged to have a computer fixed up in the loft of my house and I could then proceed to do my stuff from there, but they wouldn't give

me anything meaningful to do. It wasn't until I went to the plant and sort of got in their face and convinced their doctors that I could do it that I was allowed to go back inside the plant. The difference it made for me was that at home I still felt—you have to imagine I couldn't even get a cup of coffee and move from the kitchen to the living room or take something up to the computer loft without having someone carry it for me. But at work now, I was on one floor, I could go in, sit down at my terminal, have the phone ring and someone ask me to make a program change and I could tell them, "No damn way," and feel completely productive.

The idea was that you were back at work and you were doing something you knew how to do and something that people looked to you for, whereas at home you were still reliant on other people. Getting away from that dependency was great; it was just great.

Mr Wettlaufer: There is a danger in commutation, however, and that is first of all that the party who is injured could spend the lump sum payment in a few short years and then be left in a poverty-induced state for a number of years after. The second danger, of course, is that there is that element of fraud which insurance companies have been guarding against. We don't know what the element is, how large it is, but it is there. It does exist.

I sympathize with you because I was involved in an accident four and a half years ago and it is probably a permanent injury. We think, judging from the last X-ray, that I now have arthritis in my back as a result of the accident. So I understand where you're coming from, but I also look at it from the standpoint that what we are trying to do here is to devise a plan that will balance the needs of the majority of people against what is an affordable cost. There is no doubt that some people are going to fall through the cracks of any type of insurance plan.

Mr Tier: I agree, and I know that you are going to do your utmost to make sure that as many people as possible don't, and when in doubt, I would ask you people to err on the side of the injured, please.

Ms Castrilli: Thank you very much, Mr Tier. I can't remember where I've seen a clearer presentation. I commend you for making your points clearly and altruistically because, as you point out, it doesn't affect you specifically in this particular case. I'm intrigued by a number of things that you say. Your discussion on net income restriction, for instance, the notion that you should be able to sue for potential income and the return to tort for that of course is a problem with this legislation. Were you aware that the legislation does not allow, for instance, for dependent spouses and children of someone who is deceased as a result of an accident to be able to sue for that as well?

Mr Tier: No, I wasn't.

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Ms Castrilli: What would you think of that? You must have a family.

Mr Tier: I do have a family. My family, however, is grown and I don't see that as a problem for me. I see it as a problem for others. People in Ontario these days—I watch my son in Toronto struggling, with him and his

wife working, to make ends meet. Those aren't my circumstances, so therefore that particular thing would not affect me or my family. But if he were to, it would be just chaos for his family. So I have mixed feelings on it.

I understand what you're trying to do here, please; I understand that you're trying to stabilize the cost of premiums. But what I fear is that when people chase one goal and get completely focused on it, they'll lose sight of the original thing. If you'll pardon me, the old expression is, "When you're up to your ass in alligators, it is difficult to remember that your original objective was to drain the swamp."

The problem here is that if we focus on that money that is going out for the premiums, and with that forget that the reason for the premiums is to protect the injured parties, then what we are really doing is setting up some sort of licence fee to drive a car that's a hell of a lot higher than the one we pay now. So again pardon my language, but I feel very strongly about that. I know you people are going to work very hard at it, because you're going to have a lot of people like me out there banging on your committee door as you go from place to place.

Ms Castrilli: You heard the previous presenter talk about how medical and rehab costs could be reduced. We've had evidence from insurance companies that say that is the big component, along with some other things, but that's the biggest. Their definition of stabilization of rates is a significant increase over what we now have. I'm sure you heard the figures that were quoted before: anywhere between 7% and 12% a year.

I'm just wondering because you mention that—I think it's good for us to remember that there is a balance between rates and what we're trying to achieve—what do you think would be a reasonable rate? I'm not asking for a percentage but just some kind of sense of what you think the public would bear.

Mr Tier: If I were not injured and I were before you now, I'd be banging on you to keep the rates as low as possible, and I don't care; I'm sure I would, because I hadn't been injured before, and all I saw were the rates going up. But I've been through it now and I understand the value of having people in the trauma clinics who will run you through the exercises, get you going and show you the options that are out there for you to find a prosthesis and get you back to work and get you doing those things. So I'd pay fairly highly for them. Because I've used it now, it think it's a valuable thing to have. The problem is that you only use insurance when you have the accident. Up until then, it's a pain, but after you have the accident it's worth a lot of money. So for me personally it's worth a lot of money.

Ms Castrilli: Insurance companies, of course, would say that you are part of a very small group that benefits from this, in effect.

Mr Tier: That's possible, but that's why we pay the money. Why else would they take my money if they were not going to do that? They would be taking it under false circumstances, wouldn't they?

The Chair: Thank you very much, Mr Tier. Your input to the committee has been most valuable to us, since it's a unique and very valuable perspective.

CANADIAN COALITION AGAINST INSURANCE FRAUD

The Chair: We now welcome the Canadian Coalition Against Insurance Fraud. Mr Charlebois, welcome.

Mr Marc-André Charlebois: Mr Chairman, members of the committee, I'd like to say for the record I was here on time, but I thank you for granting me 20 minutes to cool my heels. I had quite a bumpy ride in the plane, and the taxi driver who brought me here used to own a driving school that was put out of business by graduated licensing. Now, that I fail to understand, but anyway.

My name is Marc-André Charlebois. I'm the executive director of the Canadian Coalition Against Insurance Fraud. I should mention that I'm also vice-president, public affairs, for the Insurance Bureau of Canada, but today I'm wearing my coalition hat.

I'd like to take a few minutes to talk about insurance fraud and the coalition, and then I will go right to the heart of the matter, that is, share with you some measures which, if adopted, would contribute significantly to the reduction of insurance fraud and in turn the cost of insurance.

In the course of these hearings you've heard several representations on insurance fraud, therefore you're already familiar with some of the facts. The cost of fraud in Canada has been estimated at \$1.3 billion a year, a very lucrative business indeed. Between 12% and 15% of the insurance premiums we pay cover the cost of fraud. So on an average auto premium of, say, \$1,200, about \$160 goes to pay for fraud. Here in the Sault, with premiums between \$800 and \$900 a year, that works out to about \$120 going to pay for fraud. If we want to talk about actually reducing the cost of auto insurance, cutting fraud is one way of doing it.

Our research indicates that Canadians don't think that insurance fraud is criminal. Those we polled admit that insurance fraud is unacceptable, but they also find it understandable. Sadly, half of all Canadians think it is common practice. This attitude largely stems from misconceptions about the insurance product itself. The product is intangible. Its purchase is rarely an option. Insurance is sometimes seen as an investment. For these and other reasons, consumers don't always feel they get value for money, especially for those who never submit a claim.

Insurance fraud is of two broad categories: opportunistic fraud and professional fraud perpetrated by hardened criminals. They both require different solutions. Criminals will not be deterred easily, but the occasional opportunistic fraudster, who's asleep in most of us, I might add, can be reformed.

The Canadian Coalition Against Insurance Fraud came to be in June 1994. Its mandate was to assess the magnitude of the problem, determine its causes and take some concrete actions to curb fraud. The CCAIF is far more than an insurance industry effort. It's very much a partnership of all of those who are affected by insurance fraud. We have succeeded in bringing together 70 organizations and companies which all have a direct stake in this issue.

Among our directors we have consumer advocates, police chiefs, fire marshals, regulators, insurance industry

executives and representatives from companies like KPMG Peat Marwick Thorne and IBM Canada, companies which have all developed a keen interest in forensic and information-management-related activities. After some 20-odd months of activity we've made some headway on a number of fronts, including our own industry's business practices, detection and enforcement and public awareness. More than 100 volunteers from our member organizations have been active in analysing the problem and formulating solutions.

Here are a few samples of our achievements to date.

We've partnered with Crime Stoppers to make insurance fraud reportable through this well-known crime reporting service. This alliance serves two purposes. It makes it abundantly clear that insurance fraud is a crime, because you would be amazed at the number of people who don't see it this way. It also enables Canadians to play an active role in detecting fraud and preventing the settlement of fraudulent claims.

Canadians now have a practical channel for doing something about insurance fraud, and from the success of the program across the country, it's clear Canadians are getting the message. In fact, after my appearance here today I fly to St John's, God permitting, where I will launch tomorrow the coalition-Crime Stoppers alliance in Newfoundland.

Under the auspices of the CCAIF, insurance industry investigators and loss adjusters are working with police and fire investigators to share information techniques. A week-long advanced fraud and fire investigation techniques seminar has been held in two different Ontario regions and a third one is planned for June in Alberta. We also make regular presentations to our coalition members to keep them informed of the nature of our work and our progress.

In terms of public awareness, we've been airing messages on insurance fraud on 30 radio stations across the country for more than two years now. This campaign, part of a larger program on loss prevention run by the IBC, has served to sensitize Canadians to this issue and publicize some of our anti-fraud activities.

In partnership with the CBC, we developed an episode for the popular youth program called Street Cents, which was dedicated to insurance fraud. From this program, which was viewed by approximately one million youngsters across the country, we had one of our partners, the Insurance Institute of Canada, design and produce a special teacher's binder for use in classrooms across the country. That's because we believe in prevention, and we believe that to prevent this kind of fraud we should start with kids.

The coalition has made every effort to make its endeavours known to Canadian through active media relations. Our slogan, "They Cheat You Pay," has been displayed in shopping malls everywhere in Canada, and insurance policyholders are constantly reminded that fraud costs them a lot of money.

The insurance industry itself has responded to public opinion that believes the answer to the problem rests with industry-led initiatives. CCAIF committee members have scrutinized the business relationship which exists among customers, brokers, agents and underwriters in order to

determine which measures could be instituted to better deter fraud without making the process more cumbersome for consumers. Many insurers have established special investigative units to detect and investigate fraudulent claims, but we believe that the process to stem fraud must surface as early as the application for insurance. The coalition has identified a number of best business practices. These will be updated on a yearly basis.

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Other activities are being carried out with some of our non-industry stakeholders, such as doctors, lawyers and rehabilitation specialists. I don't have to remind this group that a huge source of fraud is bodily injury claims resulting from automobile accidents. I'm sure you've read with interest the news about the Ontario College of Physicians and Surgeons report on alleged fraud committed by a number of their members. The coalition has been supportive of the college's efforts on this front. In fact another one of our partners, the Insurance Crime Prevention Bureau, has been closely involved in the inquiry. We're looking at further cooperation with these stakeholders. While we recognize that physicians are not investigators and are not trained to detect fraud, in some cases it is likely that, as with any other group, there are those who become willing participants in fraudulent activities for personal gain. This is, we feel, unacceptable.

We share the government's commitment to control the cost of insurance wherever possible. We congratulate the government for including in the draft legislation stiffer fines for uninsured motorists, requiring sworn statements and proof of identification for settling claims, tightening notice periods to 30 days and making it an offence to provide false information.

We're of the view that the government of Ontario, through its new auto insurance legislation, has an opportunity to further address the serious problem of fraud and join in the battle against it. It is in this spirit that the Canadian Coalition Against Insurance Fraud would like to make the following concrete proposals to government.

Insurance fraud is a crime which is difficult to investigate and whose perpetrators are rarely prosecuted. There are reasons for this. There are bottlenecks in our courts and a lack of police resources to investigate what is still perceived as an innocuous white-collar crime. We believe that government and the private sector can join forces and take the necessary steps to address these shortcomings.

In that regard, we propose the institution of a fine-levying system similar to the one which has been adopted first in New Jersey and subsequently by other states including New York and North Carolina. Of course, we realize that such a system would have to be adapted to our own legal environment. In the states where this approach has been adopted, a government-run organization is vested with the quasi-judicial power to levy fines on people who have been caught committing insurance fraud. The fines are hefty, ranging from \$5,000 for a first offence to as much as \$15,000 for a third offence, and serve both as a deterrent to fraud and as a means to unclutter the judicial system. We would gladly provide this committee or government with more details about this fine-levying system.

Another means of further addressing the problem is the appointment of one or two special insurance fraud prosecutors in the crown attorney's office. These prosecutors would ensure that properly documented cases are processed expeditiously. Not only would this system encourage insurers to prosecute fraudsters, it would also send a strong message to would-be fraudsters. One source of funding for these additional resources could be the proceeds from the fine-levying system. I also believe that the P&C insurance industry would welcome such initiatives and be ready to consider contributing to the early financing of this key measure.

You've already heard from the Insurance Crime Prevention Bureau. Mr Jean-Claude Cloutier addressed this group earlier last week, talking about research on pre-inspection of automobiles. The coalition committee which spearheaded this research was chaired by Mr Bernie Webber, who some of you may remember in his previous incarnation as a senior government executive. He's now the CEO of the Facility Association. Insurers would inspect cars before issuing a policy. The experience with such a scheme in the US indicates that only mandated programs can be effective so our recommendation would be for this particular piece of legislation to provide for future regulations on this matter.

The cost of implementing such a program would be more than recouped through the reduction in the number of phantom cars reported as stolen and the identification of previous damages to automobiles being insured. The rate of return on these programs in the US have ranged from \$4 to \$8 per \$1 invested. Here in Canada our research indicates a return of \$4 to \$1 at a minimum. We've included in the kit that we circulated some more information on this system.

Finally, the CCAIF believes that something has to be done about pink slips. It is now much too easy to obtain this proof of insurance illegally and to drive without proper insurance coverage. The government could join forces with the industry to devise a proof of insurance system which would be simple, effective and fail-safe. A simple coding of the existing forms might do for now, but if the government contemplates, as has been advertised, the introduction of a multi-use, magnetically coded card, information about insurance status could easily be included on the card, making it easy to identify uninsured drivers.

Fraud is certainly not a problem which is unique to automobile insurance. However, if some or all of the proposed measures could be implemented, we at the coalition feel that our fight against insurance fraud would be enhanced. Again, I would like to thank you for accepting to provide us with an opportunity to present our ideas. I would be happy to take your questions.

The Chair: Thank you very much. We have about three minutes per question.

Mr Jim Brown (Scarborough West): If we implemented the anti-fraud suggestions that you put forward, would that mean that we could expect a 15% drop in premiums?

Mr Charlebois: As our research has indicated, the analysis of 500 closed claims files 18 months ago gave us the \$1.3-billion figure which allowed us to arrive at

between 12% and 15% of your premium going to cover for fraud. I don't think that we can ever, ever expect to obliterate fraud completely. I think we will have to accept that fraud is going to be with us whether we try to curb it or not. But I think with some of the measures we've proposed, we could bring that rate of fraud down and it might have an impact on premiums to the tune of 8%, 9% or 10%.

Mr Jim Brown: What did the fine-levying system in New Jersey do to the premiums, and what would it do here to the premiums?

Mr Charlebois: I don't have numbers or percentages to provide to you, but I have a document that tells me that in one year they've amassed more than \$500-million worth of denied claims, and that goes along with the fines. The fines serve to pay this fraud bureau that they've established. I can't really tell you what percentage of the premium has been brought down by this exercise.

Mr Jim Brown: But one could expect at least a 10% reduction if you could get a handle on fraud.

Mr Charlebois: I would venture that this is the kind of saving we could make.

Mr Douglas B. Ford (Etobicoke-Humber): When you mention \$5,000 for a first offence or \$15,000 for a third offence, I believe this would be a deterrent in the fact that it might frighten some people not to commit fraud. But the courts right now are overcrowded with all kinds of fraud: welfare fraud, unemployment insurance fraud, workers' comp fraud. The courts are cluttered with people doing this type of thing.

Mr Charlebois: That's exactly what our proposal is trying to avoid.

Mr Ford: And this is what I'm saying here. If we did put these measures into effect, we would have to make sure that the laws were carried out, and that's not happening. Then we get people that we do charge and they get legal aid and we have to pay them from the other end.

Mr Charlebois: With respect, Mr Ford, those fines are imposed outside the court system.

Mr Ford: Outside the court system?

Mr Charlebois: Yes. It's a bit like cities have the right to impose parking fines without taking you to court. You go to court if you want to challenge the fine. This is what is happening in New Jersey. People get fined: 98% of the people that were fined paid the fine and 2% went to court to contest the fine. So this is, we feel, a way to unclutter the courts.

Mr Ford: So you have positive proof that they just pay the fine rather than go to court.

Mr Charlebois: Yes.

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Mr Crozier: One form of fraud, or some might call it misrepresentation, is driving without insurance, and of course there has been some suggestion that the fines for that be even higher than proposed in the draft legislation, that it be at least equal to what the premium would have cost the person. Have you found in your work that those who may try and misrepresent themselves by not having insurance—and I don't know whether you get into this area—the main reason may be that they can't afford it?

So then you think, what's the point in fining them because they probably can't pay the fine, and thirdly, that they're probably going to drive without insurance anyway.

Mr Charlebois: The approach there would be to remove their right to drive a car, remove their driver's licence. In this fashion, if they drive without a licence and they're arrested, it's quite obvious that they're committing a felony. The problem with insurance is that policemen cannot readily determine if the pink slip is valid or not on the spot, and this is what we would like to see changed.

Mr Crozier: Exactly, and I support that. Your suggestion about the multi-use, magnetically coded card, I certainly appreciate what you're driving at and the technology may be there. I merely state for the record from my point of view, and you may wish to comment on it, I'm concerned that we're getting to the point that my whole life history will be on this little card and that any mere bit of privacy I have as a citizen is gone. It's just unfortunate that we have to get to that point.

Mr Charlebois: I guess this case will have to be made in government. We're just saying if it's going to be a decision of this government to go ahead with this card, we would like to piggyback on it.

The Chair: It's appropriate, I suppose, that we move to Mr Martin whose riding we sit in, the riding of Sault Ste Marie, for the last question. I would put the emphasis on "question" as opposed to "preamble." Mr Martin is, after all, the master of the preamble. I say that with respect, sir.

Mr Martin: I'm very disturbed actually by what I read into this and what I sense, by way of your presentation and the fact that not only are you leading this coalition against insurance fraud but you're also vice-president of public affairs at the Insurance Bureau of Canada and the connection there, the fact that you—it seems anyway, and maybe you can enlighten me here—you don't have any consumers on your advisory group—

Mr Charlebois: We do, sir.

Mr Martin: —or at least you haven't referenced them here in the presentation that you've given me. I would be concerned that—

Mr Charlebois: May I just interrupt you, sir? We do have the Consumers' Association of Canada as a member, and not only them but other advocacy groups made up of consumers.

Mr Martin: Okay. I don't think anybody would disagree that fraud of any sort is just not acceptable. It's not always, though, as simple as some would present it. To be making wholesale changes to a system by way of legislation based on an understanding or a perception of fraud and how we get rid of fraud as opposed to try to put in place an insurance system that actually works for people, in my mind, are two different questions. Has any work been done at all, Mr Charlebois, to determine how much fraud goes on in the other direction?

For example, I was talking to a young man here this afternoon who told me what I considered to be a real horror story of the hoops that he had to jump through to try and get what he needed to make himself better so that he could get back to work and get on with his life, the

fraud that's perpetrated by insurance companies in frustrating people as they try to recoup what they've paid in by way of service over a number of years.

We all have our own individual stories. My wife scraped the side of our car about two years ago and I chose to pay the \$1,600 myself, out of my pocket, to get that fixed because if I didn't, my premiums were going to go up and my deductible was going to change such that it was a net benefit to me to actually pay the bill instead of going to my insurance company.

I know people in this town who have been broken into who have paid insurance for 10 or 15 years, and because they've been broken into a second time, they've decided it's best that they just replace the tools etc that were lost and replace the damage that was done themselves rather than go to the insurance company and have them pay the cost, have them honour an agreement that was made when they bought insurance in the first place.

I'm wondering if any effort is being made by your organization to try to balance this question and to try to find out if the reason so many people may be starting to defraud this system is that they've themselves have been abused by the system in the first place, not that that, in my mind, ever justifies doing fraud.

Mr Charlebois: As I say in my presentation, I think a lot of the fraud occurring right now is because of a misunderstanding of what insurance is all about. The basic problem with the consumers is that it is not something they can touch and feel and park in the laneway and show to their neighbours, and it's something they have to pay every year. A certain level of frustration develops, and when they have a chance to claim, they see their accumulated costs as an investment and they want to recoup not only the investment but some kind of interest as well.

Mr Martin: That's a generalization to make, of course. There are people who have a contract to honour—

Mr Charlebois: But what you call fraud perpetrated by companies, I wouldn't call fraud; I would call it

something else. We haven't looked into that, but I wouldn't call it fraud.

Mr Martin: Of course you wouldn't, because you work for the industry.

Mr Charlebois: I would venture to say that the coalition is at arm's length from the industry. We have made sure that in the 70 organizations which make up the coalition we have strong a consumer representation. They're on committees and they have a voice in the course of the research we do and on the measures that are suggested.

In Ontario there are about 80 companies offering automobile insurance, so there's a very competitive environment. Companies don't want to lose their customers. The customer base does not increase, and the only way of making more money is to carve more of a market out of a very fixed market. It is in companies' interests to treat their customers properly, and they go out of their way to make sure that when there's a claim, the claim is settled fast and the law provides for very short terms for payment of claims.

As well, at the insurance bureau there is a consumer office where people who feel they have not been treated properly by their insurer or broker come to our consumer specialists and sometimes we act as the third party for those insured and appeal to insurers. Many times we get cases resolved without having to go to court, making sure that both parties are happy. So there is an effort on the part of the industry to make sure that consumers and customers are treated fairly, for sure.

The Chair: Mr Charlebois, I thank you for appearing before the committee and the Canadian Coalition Against Insurance Fraud for their presentation today.

Mr Charlebois: It's been a pleasure.

The Chair: There being no more business to bring before the committee today, we'll adjourn and reconvene in Ottawa, God willing, at 9 am tomorrow. The bus will be departing at 5 o'clock or shortly before that, if you would be ready to leave as soon as possible.

The committee adjourned at 1629.

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Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk
Martin, Tony (Sault Ste Marie ND) for Ms Lankin
Wildman, Bud (Algoma ND) for Mr Silipo

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Première session, 36^e législature

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Standing committee on
finance and economic affairs

Auto insurance

Journal des débats (Hansard)

Mercredi 28 février 1996

Comité permanent des finances
et des affaires économiques

Assurance-automobile



Chair: Ted Chudleigh
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Wednesday 28 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Mercredi 28 février 1996

The committee met at 0903 in the Westin Hotel, Ottawa.

AUTO INSURANCE

RICHARD SCHOOLEY

The Chair (Mr Ted Chudleigh): This morning we have the pleasure of welcoming Crain and Schooley Insurance Brokers Ltd, Mr Richard Schooley. Welcome to the committee, sir. We have 20 minutes to spend together. We would appreciate your presentation, and any time remaining we'll fill with questions. Please proceed.

Mr Richard Schooley: Thank you, for the opportunity to appear before a committee. We welcome the opportunity, especially to have it come into eastern Ontario.

I very much appreciate the challenge faced by a government to reflect in legislation the extensive diversity of opinions and interests in this necessary consumer product, providing structured protection to the citizens of Ontario resulting from the use and operation of automobiles. Indeed, it might be an amusing and even fanciful exercise to try to guess what an automobile might look like if it was the product of statutory regulation.

My name is Richard Schooley. I'm an independent insurance broker. I'm a principal of Crain and Schooley Insurance Brokers Ltd, a fellow of the Insurance Institute of Canada, and a graduate member of the Canadian Risk and Insurance Managers Society. I am currently a director of the Insurance Brokers Association of Ontario from the Ottawa Valley.

Our firm, Crain and Schooley, comprises some 35 employees servicing a clientele of approximately 8,000 people on the west and southwest of Ottawa and living in north Frontenac county, Lanark county and the Leeds and Grenville area. The roots of our firm can be traced back through family connections since the 1930s. I've been an insurance broker since 1966.

First of all, I'd like to compliment Mr Sampson on his approach to the review, the wide consultation he's carried out and the draft bill, which I know reflects much of what he has heard from his consultation.

I am personally pleased to see the reinstatement of the right to sue for economic loss. Its removal with Bill 164 could be looked upon as fair for those injured and not at fault in an auto accident because of the generous income replacement benefits, extensive medical and rehab provisions. Bill 164 was, however, extremely unfair and unreasonable for what it took away from the dependants of some not at fault and killed in an auto accident. The death benefit provided under Bill 164 was simply not

adequate to compensate a family for their full economic loss.

I feel the deductible and the threshold outlined in the draft are reasonable.

Other members of IBAO I know have addressed a number of points with you and I will not rehash those today, but I do have a couple of specific concerns I would like to bring to the committee.

The first is with regard to income replacement benefits. The adequacy of the \$400 per week, representing 85% of net income, is a concern. I believe it should be higher. Bill 68, the OMPP, provided 80% of gross income up to \$600 a week. This equated to \$39,000 a year of income and in 1990 was very close to 80% of the average Ontario industrial wage, so 80% of potential income loss was covered within that threshold. In the current proposed legislation, in order to be at an equivalent level we should have that at about \$500 per week. I believe the \$500 a week is a fairer limit.

I've listened to the arguments against this. There has been in the broker community a fair bit of discussion in this regard. The focus of the arguments against increasing the benefit is with regard to cost, and certainly our association has an affordability concern. I'm not an actuary, so I don't know what the cost of the change would be, increasing it to \$500 per week, but my instinct is, since the recovery is limited to net income as opposed to gross and tort recovery deducts the no-fault benefits paid, that the extra cost would be minor relative to the appropriateness of a higher benefit.

Another argument suggests that if \$500 is the average income in Ontario, there are a lot of people below the average who would be subsidizing, through premiums, the more affluent, and those people have the option to buy up. If this is true, why is the average worker forced to buy \$600 of coverage when all they need is \$500, the optional benefit only being available in \$200 increments?

Another concern is probably one of clarification, but it's with regard to the student disability cover, part III non-earner benefit. The summary of the draft statutory accident benefit schedule and the draft regulation leave it unclear to me whether the enhanced non-earner benefit for students—85% of maximum IRB or \$340 a week—increases if the optional benefits, part IV, are purchased. As the father of two graduated students who are still looking for work in their professional fields, I'd be inclined towards purchase of this coverage, the option, if indeed it were. Clarification, it appears, is necessary.

The next concern is collateral benefits. One of my cohorts thought I was, in approaching this subject, tilting at windmills. I'll leave it to the committee to decide whether this is a concern. Prior to OMPP, employer-

sponsored income continuation plans, long-term disability insurance, employer-sponsored or personally arranged, paid benefits to someone disabled by reason of accident or sickness. It didn't stipulate whether you had to be in a car accident or what the source may be. These benefits were not considered by a court when considering a tort award for loss of earnings or earning capacity. In other words, what you had privately was out of the picture and so wasn't taken into consideration in determining the tort judgement.

0910

Bill 68 and Bill 164 both stated that these personal or employer plans were first payor—in other words, the auto policy was second—and that the auto insurance policy topped up those benefits or, in their absence, the automobile accident benefits paid first or paid what wasn't covered by private plans. Further, the accompanying legislation to Bill 68 stated that you could not sue to recover loss of income coverable under automobile insurance benefits.

Bill 164 of course removed the right to sue for economic loss altogether, so again it was not a concern there.

The new bill reduces IRBs to \$400 per week and provides for the purchase of additional optional cover. I also believe the designers of the draft legislation, in accepting \$400 as adequate, have done so understanding that a significant number of employees in Ontario are covered by employer or personal disability insurance which the auto insurance cover would supplement.

The new bill, as drafted, permits a person to sue for economic loss which exceeds collateral sources of income, including income replacements, personal or employer-produced, or the accident benefits under the auto policy. In other words, it only permits you to sue for amounts not recoverable from income replacement insurance or the auto policy.

It's been suggested that some workplace and personal disability plan insurers, the companies providing these benefits, plan to or are ready to exclude payments someone will receive under an automobile policy from the benefits receivable under their insurance policies, and to offer lower rates on these contracts or to restrict the policy such that their policy will become second payor. This would make it in conflict to the auto policy that exists now and what the proposed legislation I believe also is suggesting.

In the name of understandability, this should not be allowed to happen. Legislation should restrict this practice or possible practice. Prior to Bill 68, there was no thought, in my experience, of any life or disability insurer excluding disability resulting from an auto accident. Why should that possibility exist now?

If life and disability insurers are not restricted from this practice, the following will occur:

Those not at fault in an accident would be forced to tort actions for economic loss that they would otherwise be receiving from those policies, personal or employer group insurance policies, over and above SABS.

Those at fault would receive no benefit from those policies.

Those expecting that these limited plans would supplement the \$400 per week from the auto policy would be

denied the benefit, further increasing the tort action frequency, something the proposed legislation is going to laudably ends to avoid.

The last one, and the concern personally, is that the job of the broker in providing proper counsel to an insured with regard to the need for optional benefits is very difficult, if not impossible. A broker is probably aware of where someone's employed but certainly is not privy to the details of what the employee benefits program of that employer might be. To expect an insured to bring into my office a copy of their employee benefits program to see whether it contains an exclusion or a second payor clause with regard to the income replacement benefits I think gets a little onerous.

As brokers, we advocate insurance products that the public find affordable and understandable. No consumer can be expected to understand or indeed anticipate the problems the previous point could cause. Further, such actions will undoubtedly impede your aims to stabilize the pricing of automobile insurance.

Optional coverages: In my view, the product has too many optional coverage benefits. I have included with my submission to you a copy of a little client brochure we use in our office. We produce this to try and give our clients an understanding of the options in their policies and an explanation of what they are. To add to this seven more options makes it quite a job by way of explaining and I think in even keeping someone's attention. My suggestion with regard to options is that the funeral benefit increase be included with the optional benefit to increase the death benefit, so include the increased funeral when you buy the increased death benefit or indeed just increase the funeral benefit in the basic policy.

The second one is the option with regard to indexation. I question the need for an indexation option. The proposed legislation provides for the right to sue only for economic loss which exceeds collateral benefits, including SABS. My concern is that if the benefits aren't indexed, is this not going to be the fact an injured party is going to use as their justification for commencing a tort action? My belief is that we should be including indexation in the base legislation. My suggestion again is that regulation be the vehicle to do that. Rather than have some vague inflation clause in the auto contract, as is happening with Bill 164, periodically by regulation the amount of weekly income would be adjusted according to whatever the factors are that would justify that change.

The next point is with regard to contingency fees. While it has nothing to do with the proposed legislation the provision in Ontario for the legal community to have the right to contingency fees will no doubt be a destabilizing factor to the cost of automobile insurance, indeed all liability insurance in Ontario. In our ambition to stabilize the cost of auto insurance, the impact of contingency fees must be kept in line if the government is giving consideration to such a change.

I haven't got a lot on the next topic, but it is, as far as I'm concerned, very important: road safety. There is a significant opportunity, I believe, to reduce vehicle damage and personal injury through coordinated road safety initiatives. Recognizable reduction in death rates for young drivers has been realized through young driver

training. The vast majority of that training now is carried out in the private sector, but if it had not been for the initiation and the validation by the Ministry of Education and Training of this program, it wouldn't have the profile it has today and certainly we would not be seeing the benefits to our young drivers that we have from it. I would therefore encourage the government to re-energize the road safety agency to make our highways and streets the safest possible. As a society, we have but scratched the surface of the benefits from better driving practices, road and vehicle design.

"Available," "affordable," "understandable": These are all words that the brokers' association has been bringing forward with respect to insurance coverages in our concern for our clients. "Available" and "affordable" I believe have been addressed by the proposed legislation. My concern, and what I've been bringing to you today, is understandability.

As the role of the insurance broker changes from that of providing a product supermarket to include that of personal and family risk management consultants, advising on and coordinating not just house and car insurance but life and disability coverages, predictability and consistency of various products are necessary for the consumer to understand their needs and the advice of their insurance professional. The items I've addressed today come from these concerns. I know your motivation has been the first two, availability and affordability, and it certainly is reflected in the draft legislation. My wish is to make sure that the product is also understood by the public, insurance professionals and risk managers.

Again, thank you for coming to eastern Ontario. It's very much appreciated by those of us living outside of Metropolitan Toronto. I know you've been to the north as well and, as I say, it's very much appreciated.

0920

Mr Bruce Crozier (Essex South): Thank you, Mr Schooley, for a very detailed presentation, one that's brought us a couple of new questions that may have to be answered by those who know the legislation in a little more detail.

Affordability: That's one of the two As and a U. You have had an opportunity, no doubt, to hear the presentations in Toronto of the IBC, Zurich and some of the others, and the discussion over just how much of an increase in insurance is going to be included under this plan. You're a front-line broker. You see people looking for new policies, people who come in for their renewals. Is a 7% to 10% increase per year your definition of stabilized insurance rates, and is that what the public perceives?

Mr Schooley: It's a difficult question to answer specifically that way. As a consumer and as a broker, I like to see stable pricing. We certainly have not had stable pricing in the insurance product, other than from the period of about 1989 through 1993. Whether that was because of the product or whether that was because of economic situations etc is difficult to know for sure. I feel that the changes with regard to the injury side of the insurance equation can be stabilized through this process. There was concern in the industry with regard to fraud and people's lack of willingness to get back to work.

On the other side of that, prior to no-fault the pure tort product was very unfair to the average person driving in the province. With regard to those not at fault, the process of going through a long legal process was extremely unfair. It was cruel in many cases to see the effects on many families in the long process in getting benefits.

What the public is looking for is something they can understand, not only the product but also with regard to the pricing. What concerns me is the cost of the automobile repair component of the insurance product. That really does not get a lot of attention, and it should get more attention.

Mr Peter Kormos (Welland-Thorold): Thank you, Mr Schooley. As to the issue of highway safety, I told this committee a little while ago that in British Columbia the ICBC just introduced a 30-point program to enhance highway safety as a means of controlling premiums, because really that's what it's all about at the end of the day: With less bodily injury, less tin and glass damage, premiums are going to be lower, no two ways about it. Things they've done in BC are a comprehensive fraud control program: "No crash, no cash"—you might have heard of that one. They're implementing photo-radar because they understand that excessive speed causes accidents. The Solicitor General is still pondering whether it was wise to have pulled photo-radar off the roads as promptly as he did.

Mr Schooley: Have they sold the Ontario equipment to BC?

Mr Kormos: They haven't peddled it off yet, because I think they've got plans. But the reality is that my anecdotal experience, and I trust most people's, is that since the abolition of photo-radar we have witnessed a change in driving patterns, especially on the 401 etc. Aren't programs like photo-radar important as part of a comprehensive program to control accidents and the cost to insurers and hence to premium payers?

Ms Schooley: I believe they are, as well as vehicle inspection. That's another thing they do in BC: mandatory vehicle inspection. I believe that also is a significant contributor.

Mr Kormos: So shouldn't a very specific recommendation of this committee be that the government get off its high horse, restore photo-radar, save a few lives in the process and reduce premiums?

Ms Schooley: I certainly won't object if photo-radar comes back on the highways of Ontario.

Mrs Margaret Marland (Mississauga South): We've been hearing a lot, as you can imagine, from people who have sustained injuries, some very sad cases, as a result of motor vehicle accidents. I'm interested in what you say are some of the things insurers should do, including, "The job of the broker to provide proper counsel to his client on the need for the optional SAB benefits becomes almost impossible." I have absolutely no allegiances to the industry other than that I need it as a client. I'm wondering what recommendations you could make to us as a government to correct what I have heard and find very disturbing.

We had a very courageous young 35-year-old mother of four children before us yesterday in a wheelchair with the result of injuries she sustained, and for four years

she's been fighting with her insurance company. She's upfronting the cost of the equipment she needed in her home and her chair itself. As a broker, you're in a very good position to tell us what it is that's happening. Are the people dealing with these cases not trained adequately? In another case we had one woman who had eight assessments in one year, and so on. If you can give us some advice about what we can feed back to the industry, we'd appreciate it.

Ms Schooley: What makes it difficult for me to respond about the lady you were talking about with the wheelchair and four years, is, when was her accident, or when was her injury caused? We're currently dealing with three different pieces of legislation.

Mrs Marland: Four years ago.

Mr Schooley: Under OMPP, there is with the OIC a whole process of appeal and arbitration in place. I don't know whether that has fallen down or what the particular problems might be with it. With the proposed legislation, I'm pleased to see the creation of DACs. I hope that would go a long way towards addressing this particular lady's problems, where you do have a credible—I don't know how to say it other than "credible"—centre they can go to that is recognizable to both government and industry, and hopefully that can solve some of those problems you were identifying with that woman.

The Chair: Thank you, Mr Schooley, for your presentation to the committee. We appreciate your input.

CITIZENS' FORUM ADVOCATING INSURANCE REVIEW

The Chair: We move to the next deputant, Citizens' Forum Advocating Insurance Review, Frances Paquette. Welcome to the committee.

Mr Kormos: I notice she has other members of the organization here. She might want to introduce them to us as well.

Ms Frances Paquette: We have with us this morning our honorary counsel, Ernie Tannis; our vice-president, John Watkins; and our membership secretary, Aline Thompson.

Mr Kormos: And this young person?

Ms Paquette: And a member of CFAIR, my daughter Cassandra Paquette.

Good morning, Mr Chairman and committee members. I would like to thank you for allotting us 20 minutes to speak to you on behalf of our membership. As noted, my name is Frances Paquette, and I am the president of CFAIR, Citizens' Forum Advocating Insurance Review. It may be worth noting at the outset, for the record, that we are a separate and distinct organization from the one with a similar acronym which, we gather, made a presentation to this honourable committee last week in Toronto.

Following a number of articles in the Ottawa Citizen last year written by Dave Brown, a public meeting was called for July 5, 1995. A diverse group of 50 people brought together by a common concern attended. Automobile drivers were and are very angry over the current insurance risk points system, which has arbitrarily forced them into Facility Association at greatly increased rates, and also over the general increase in insurance premiums for those not in Facility Association.

0930

Out of this meeting, through breakout groups with facilitators, came 250 questions, of which the top 10 questions were listed, and a core group willing to devote time and energy to creating an organization able to put forward the issues voiced at that meeting. This core group met regularly in an attempt to build a firm foundation as a starting point.

On August 23, 1995, CFAIR introduced its executive and outlined its direction to approximately 150 people at another public meeting. It was acknowledged at the outset that the organization would need to seek advice from experts in this specialized area of auto insurance. We also were mindful of the formidable task ahead in trying to create a new consumer group to cope with a large and profitable industry together with a government moving quickly forward in fulfilling its promises to its electorate. It was decided that CFAIR would need to crawl, walk, run in its development, and time would tell whether such a consumer group would emerge. Although the long-term mandate of CFAIR, as set out in its constitution, is to be involved in all insurance matters under provincial jurisdiction, for the reasons described above, the executive committee determined that it would first concentrate on auto insurance and focus on the Facility Association problem, since that was the pressing matter which inspired the formation of CFAIR.

We initially set our goal as being to establish a province-wide, non-profit, unincorporated association to initiate dialogue with the government, the insurance industry and all other interested parties in order to improve current legislation governing auto insurance. Our objective is to be a catalyst in the public interest until a fair solution for all stakeholders is found. Since then, the executive committee has, in its twice-weekly meetings and numerous phone calls, taken a three-pronged approach.

First, we embarked on a fact-finding mission, trying to discover why exactly this seemingly unfair situation exists.

Second, we undertook to present our members' concerns to the stakeholders through writing our initial position paper and through discussion. We found this to be an easier task than expected, because representatives of the various stakeholders, contacted us. CFAIR's executive committee was very appreciative of the industry and political leaders who showed eagerness to meet with us, some of whom kindly made trips from Toronto, which helped us better comprehend the immense scope of the exercise that we were about to embark upon. We believe, which I want to stress, that this was in no small part due to the enthusiastic participation of our membership.

To date, we have met with many parties from the insurance, banking and political constituencies, including the following: Rob Sampson, the Conservative MPP for Mississauga West and parliamentary assistant to Ernie Eves, Minister of Finance; Stan Griffin, the vice-president for Ontario with the Insurance Bureau of Canada; Bernie Webber, the president of Facility Association; and Blair Tully, the commissioner of the Ontario Insurance Commission.

As well, CFAIR has fielded an average of 10 calls a day from concerned consumers. We have learned through

these meetings and calls that this is a very complex issue, that all parties recognize that there are problems with no easy solutions and many sides to the story.

Third, we have been exploring ways of becoming a province-wide organization, but more on that later.

While much of the committee's time will be taken up with the reform of Bill 164 on compensation in injury accidents, the main focus of CFAIR at this time is in reform of the automobile insurance risk point system. The arbitrary, subjective and indiscriminate application of this system to force drivers into the Facility Association, at greatly increased premiums, has caused great anger and confusion among those affected. Interestingly enough, a growing number of CFAIR members are not in Facility but are frustrated and concerned about how the industry is conducting itself and communicating with the public. Indeed, I and many of the executive members of CFAIR are not in Facility but are committed to contributing to remedy the imbalance of power.

Numerous examples can be offered: for example, justifiable gaps in insurance coverage, such as the diplomat who was posted outside of Canada for three years and upon her return was classified as a new driver and placed in Facility; the immigrant to Canada with 20 years' claim-free driving in Europe who was told that foreign experience does not count in Ontario and is in Facility; the taxi driver who has driven a million miles on a fleet insurance policy and therefore is not identified on a policy as an insured individual, giving him 12 months without a proven insurance record. This driver was involved in a fender bender under the fleet policy, and that did count as points against him. Or the beginning driver who flipped the car and caused approximately \$7,000 damage; this accident virtually prohibits her from driving and buying a car for years to come. In addition, if she remains uninsured for more than 12 months because of cost, then she automatically goes into Facility because of the lapsed time.

Three other quick stories will give a taste of the depth of the problem. CFAIR is aware of the fact that Mr Sampson was in the unenviable position of being the point man in this area and whose staff no doubt received countless letters describing the anguishing experiences of drivers in Ontario. One couple wrote a letter explaining that collectively they had almost 50 years of clear driving records, and with two speeding tickets their premium jumped to almost \$4,000 per year. They felt like they were being treated like criminals, with nowhere to turn, and ended their letter to Minister Ernie Eves with the plea, "Please help." Waiting to hear.

A second additional story was brought to the attention of our honorary counsel by a broker who wished to remain anonymous and who emotionally recounted how an elderly widower with a good driving record was charged with careless driving in an accident involving no damages or claims and decided not to defend the matter, simply paying the fine but not realizing that this would put him into Facility, which, as the thousands of dollars per year was unaffordable to him, left him stranded at home when his only and most enjoyable activity was to visit friends and relatives.

Finally, with some of these reports falling into a believe-it-or-not category, only yesterday a new member was advised when an NSF cheque was returned—and in this case, it was the bank's error—not only were there points awarded against the driver, but when the NSF cheque was immediately presented to the bank for certification, even before the driver knew it had been returned, and the certification was refused by the bank, there was another set of points and, bingo, welcome to Facility. When the member complained that this did not make sense, the all too familiar answer was received, "That's the way it is."

All of these stories, we believe, are symptoms of a deeper-rooted problem which needs to be addressed before it spreads to other areas of insurance. Whenever our members hear, "There is nothing you can do," we are inspired to do what we can. But we need the help of the political leadership and the support of the insurance industry leadership.

Being placed in Facility can be a financial disaster, especially for the young, the elderly and the poor. It usually involves a tripling of premiums from, say, \$1,000 to \$3,000 per year, and in many cases much more, and can last for five years; in effect, a \$10,000 fine. This can mean unpleasant choices for the affected drivers. If they elect not to drive for a while, as insurance is compulsory, then they will face "new driver" premiums when they return to the market. For most, they have no choice but to pay, as being a driver is essential for livelihood or their home is far from public transport.

When the insurance companies devised the risk point system, it was put into operation without public awareness. The first time most drivers hear of it is when they receive a letter refusing to renew their insurance. Upon investigation, they could find that all the companies subscribe to the point system and they have no alternative but to go into Facility if they wish to drive. This illustrates the depth of misinformation and misunderstanding surrounding the application of the risk point system. Although the OIC has made it clear that the risk point system's application is discretionary, too many consumers are still being told otherwise.

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Recently, almost 400 agents and brokers attended half-day seminars to correct a situation which we were told is unique to Ottawa-Carleton, although our membership across the province tell of similar experiences. The problem remains that consumers are being told that the placement into Facility is non-negotiable and inflexible, and since the computer has systemized the information, no adjustments are possible, although the OIC has made it clear that it is a discretionary matter under law.

Many members of the public express frustration because they felt—in their words, not ours—that they were dealing with some kind of conspiracy or cartel when they tried to find competitive rates. This being a legal issue, the honorary counsel for CFAIR sought the advice of Industry Canada's Bureau of Competition Policy. The deputy director of investigation and research explained that provincial legislation can pre-empt the application of federal competition law by the regulated conduct defence. After the bureau further examined the

situation, it concluded that the Competition Act does not apply since the conduct of the insurance industry is "specifically authorized by law or regulated by a body pursuant to valid legislation and the power to regulate has been effectively exercised." Where else now can the consumers go for marketplace checks and balances and compliance with the rule of law?

CFAIR would not just be another special-interest group in the traditional sense, which governments and the public are used to, advancing its own particular agenda only—which is a rightful role—but would openly embrace principled negotiation following a cooperative process. There has been much debate lately as to how the general public and people affected by policies of institutions, public or private, are to participate in the decisions affecting their lives and the lives of their families and friends. Challenging questions are being posed, including questioning the very assumptions upon which contemporary dialogue happens among various constituents. CFAIR believes that this alternative dispute resolution—known as ADR—type of philosophy is what's needed generally but in particular in relation to the complex topic of insurance, which affects everyone.

It has been approximately nine months since the genesis of CFAIR in our region, and we are asking the government and the Legislature, in a non-partisan show of support, to assist CFAIR in fulfilling our mandate for the good of all the drivers of Ontario. We will always continue to have our differences of opinion and recollection, but we can be unified in our approach of attacking the problem, not the person. This is the best insurance for future long-term harmony and fairness in the difficult matters being addressed by this committee.

CFAIR hopes that this presentation and its efforts will be received by the committee as a whole, and the government in particular, in the way that the organization was formed: to reflect the needs and aspirations of the consumer by reaching out for a dignified resolution process that will teach our children and remind ourselves of how we must continue to work together to find common ground to meet each other's best interests.

On issues as complicated as insurance, it is inevitable that unforeseen situations will occur in the future and need to be resolved. At the time of resolution the views and the needs of the consumer should be represented. This has not happened in the past and the example we give you is the unilateral imposition of the insurance risk points system.

CFAIR has appreciated and enjoyed the mutually beneficial communications with the Facility Association, the Insurance Bureau of Canada and many other groups. Indeed, CFAIR was honoured to have received a letter written jointly by Bernard Webber, president of the Facility Association, and Stanley I. Griffin, Ontario vice-president of the Insurance Bureau of Canada. This letter was copied to Donald K. Lough, chairman of FA and Robert J. Gunn, chairman of the IBC. Dated February 26, 1996, the letter affirms that the dialogue between CFAIR and the industry is viewed by them as "positive and constructive"; further, they "welcome CFAIR's involvement on an increasing basis across the province." We are also pleased to note that Helen Anderson, a highly regarded

and long-time consumer advocate with the Consumers' Association of Canada, has offered to work with the industry and CFAIR in helping to realize this mandate.

How can the system be reformed? The amounts involved, although significant to the consumer, are too small—say, \$10,000—and the cases too many to appeal through the judicial system. We are proposing a form of alternative dispute resolution where the facts of the dispute between the insured and the insurer would be put before a neutral evaluator who could decide on which risk level the driver should be assessed.

It is essential that the system be quick and inexpensive. The information supplied by the company and the driver should be cross-checked for accuracy and the evaluator could make his or her decision without face-to-face meetings with the parties.

It is not claimed that this would be a perfect system, but that it would provide a better rough-and-ready justice than no justice at all. There will always be high-risk drivers who should pay higher premiums and there must always be profits for companies, but many of the drivers now being forced into Facility are those with minor offences or non-accident issues whose rates would probably not be increased or only slightly increased, but not doubled, tripled or more. There needs to be a balance.

What we are proposing is that there be established some sort of appeal process which allows for a third-party, neutral review of the decision to place a driver in Facility Association. The draft legislation and regulations already contain a great number of ADR fora—neutral evaluation, mediation, arbitration, designated assessment centres etc—including industry, consumers and others. We suggest that these principles should somehow be applied to FARM, Facility Association Residual Market, in a workable manner. This could also alleviate the inequities and problems now being experienced; namely, a lack of uniformity or clarity in proper application of the system to consumers across Ontario. Ultimately, the consumer wishes to have a product that works, is understandable, accessible and affordable, just as in any other market in society. This is especially so with automobile insurance, which is a legally required product.

So far we have only operated with a few volunteers and predominantly within the Ottawa-Carleton area. To represent five million drivers in the province of Ontario will require a much larger organization and budget. As we represent consumers on a voluntary basis, we are at a disadvantage when working with organizations with paid professional staff and travel budgets. How then can CFAIR be financed? The amount we need is small, relative to the very large turnover in the insurance market. As a mechanism for raising the money, an example exists. The Ontario Insurance Commission receives a budget of millions of dollars from levies on the insurance companies. If only a fraction of that were collected as an additional levy, a province-wide consumer organization could be set up. This kind of approach could be explored. To put it in perspective, only 20 cents from each Ontario driver would generate \$1 million.

Another way might include the CUB model. In the United States, with Ralph Nader's organization as a catalyst, citizen utility boards, known as CUB models,

were established through legislation passed authorizing the incorporation of a non-profit organization, with its own bylaws, representing consumers and having the industry mail out flyers at no expense to the industry by including them in the premium notices. With a response rate of 3% to 5%, it doesn't take long for a strong, financially stable consumers' group to be formed with memberships at \$15 per year. In Ontario, with five million or more drivers, even at the lowest, most conservative, modest estimate of a 2% response, this would translate to 100,000 members and \$1.5 million. There would be no cost to government or to the industry and there would be a clear, voluntary, self-financing voice for the consumer, itself a conflict prevention measure. Also, CFAIR would recommend that ADR be built into the structure of the organization, as it presently is in our own constitution. In Canada, through Democracy Watch, Duff Conacher, who co-wrote a book with Ralph Nader called *Canada Firsts*, has been promoting the idea of consumer associations being formed in similar fashion.

It may be helpful to briefly provide a context in which CFAIR is seeking to establish a consumer stakeholder approach with an ADR philosophy. In a broad sense, the public still enjoys a legitimate expression of its concerns or complaints in demonstration by marches. Yet there is another valuable process which deserves an equal chance, demonstration by methods, where compliments are also allowed without showing weakness or conceding anything. There is no either/or proposition involved, so that all processes throughout the general spectrum, from cooperation to confrontation, with negotiation as an underlying theme, are available for the choosing.

On an international level, we understand that conflict resolution, preventative thinking and alternative dispute resolution are gaining increased momentum after a quarter century of development, including businesses looking at the dispute resolution mechanisms of jurisdictions before setting up locations.

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In one of the first books in the field of ADR in Canada in the late 1980s, one observer of the ADR social phenomenon wondered whether ADR should not be understood as a modern-day example of democracy in action and summarized the future of the potential of ADR in our socioeconomic fabric as simply "a welcomed return to common sense." It's interesting to note that this historical vision fits in nicely with the government's commitment to the Common Sense Revolution.

Over the past decade in Canada and in Ontario, ADR has become increasingly accepted from the school yard to the corporate playgrounds. The Ontario Legislature took a thorough look at ADR in 1990 by the standing committee on administration of justice. CFAIR's honorary counsel was a witness at that hearing and was advised that it was the first time that the justice all-party committee had held hearings with invited witnesses as to what the policy of the government should be rather than soliciting responses from the public on a proposed policy or legislation, since it was recognized then that ADR would become more integral in governing a society. Many members of that committee are presently elected members of this Legislature, from all parties, and all of

them fully support the recommendations that the government of Ontario take steps wherever appropriate to integrate ADR into interrelationships with the public, whether by law or dialogue.

It was only recently, in January of this year, that the Attorney General of Ontario, the Honourable Charles Harnick, announced to the Canadian Bar Association the government's intention to integrate ADR into the civil and criminal court system of this province to bring the administration of justice into line with the 21st century. With this background, and there are many more examples that can be cited, CFAIR is seeking to encourage a new form of partnership with government and industry on behalf of consumers in a way that is unprecedented in Canada. This government, hopefully with full non-partisan support from other members of the Legislature, has an opportunity to be a step ahead without being out of step in supporting this approach.

As CFAIR moves on to deal with other insurance issues under provincial legislation, including property and business insurance, it is our conviction that fair resolution of insurance issues can only be realized by continuous and non-adversarial negotiation between the interested parties and that CFAIR should have a place at that table.

In summary, in particular CFAIR wishes this committee to consider inclusion of a neutral appeal process in relation to FARM; in general, support of CFAIR becoming a province-wide consumers' association; and finally, inherent in the dialogue with the industry and the government, for all parties to incorporate an ADR—alternative dispute resolution—approach. In this way, ADR also becomes a dignified resolution.

Thank you, Mr Chairman and committee members, for allowing us this time to address you here in Ottawa.

The Chair: Thank you very much, and we appreciate CFAIR's input into our deliberations.

Ms Paquette: By the way, we invite all politicians who drive to become members. We've included an application.

Mr Kormos: I don't know how to get these guys to do it, but have you got change for \$20?

Ms Paquette: Yes. Thank you very much.

ACTION CENTRE FOR SOCIAL JUSTICE

The Chair: If the committee can give its attention to the Action Centre for Social Justice, we welcome Ms Akeson to the committee.

Ms Aline Akeson: Thank you very much. That's a hard act to follow. I agree with everything she says.

The Action Centre for Social Justice is an organization that looks at the structural and class barriers that prevent poor people from escaping poverty in such a rich country and city. So we focus entirely on any of the government issues from the perspective of low-income people, and mostly low-income mothers, single-parent mothers. It's a very short, little paper.

The Action Centre for Social Justice is an Ottawa group which encourages and facilitates a development and implementation of action-based research and education projects which help the public and politicians learn about the structural class barriers that exclude the poor

from our society and prevent them from escaping poverty.

We believe that the existence of poverty is shameful and that to be poor is not. We rely on the information provided to us by our advisory group of poor people because they are the ones experiencing the various problems and they are the true experts and can better define and address the issues. After investigating the proposed changes to auto insurance in Ontario, we would like to inform you about how some of these changes will impact on poor people from their point of view.

The government's proposed changes: A capitalist system is based on the idea of profit and loss in business. There are good years and bad years. What the insurance companies seem to want to do is to make sure that there are no bad years by immediately raising rates when there is a bunch of claims. This changes the idea of insurance from protection for those who suffer an accident to protection for those who invest in insurance companies. This means that the ordinary person will lose by having to pay higher fees.

In the event of an accident, the rates may become completely unaffordable for low-income people. It is already very difficult to keep their old cars on the road. There is no choice about accident insurance now. In order to be on the road, you have to be insured. If rates go up, this means less money to keep the car in good repair. With the lack of proper care, there's a possibility of more accidents.

You may or may not know that low-income people—people who work at minimum wage or people on welfare—often buy an old car jointly, five or six families, and one person is designated to drive people around because bus fares are so expensive that they can't do it as families. That's one way that they're managing to even try and get work.

There are some good ideas in the bill. We approve of making those who cause accidents pay more than those who never have accidents. However, the ability to get more benefits by paying more means that there will be a two-tier system. Poor people will be lucky if they can get their recovery time paid. Wealthier people can get compensation for the pain and suffering they have undergone. Also, the rich, who can afford private lawyers, will see speedy agreements. It may take forever for poor with legal aid lawyers, if they're able to get a certificate or a lawyer from a legal clinic to handle the case. Then it may take months to get to court, causing further backlogs in an almost moribund system. As you know, the courts are backed up to the hilt.

If the law says that in order to drive a person has to have insurance, the law should also make sure that the people are equitably covered by insurance and that they're not paying more and more for less and less coverage and that the rich do not benefit at the expense of the poor.

We had a meeting with 20 poor women who were trying to get their kids to school and trying to find jobs, and even getting children to school is difficult because bus passes in Ottawa are extremely expensive.

That's our small, little proposal, but we want to make sure that you hear from that particular group of the population who are being hit at every level at this time.

Mr Kormos: I don't have as benign a view of insurance companies as a whole lot of people do. I think they're nasty little corporations whose purpose is to make money at the expense of drivers and innocent victims, and their track record isn't particularly impressive. They've been picking the pockets of drivers in this province for decades and beating up on victims for as long.

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What's interesting is that in the first week of these hearings we saw some incredible divisiveness within the insurance industry about what this proposed reform is going to do to premiums. The IBC, the Insurance Bureau of Canada, points out premium increases on an annual basis of around 7.6%, even with these reduced benefits. Zurich, the second-largest auto insurer in the province of Ontario, says bullfeathers to the IBC and says: "Are you kidding? We're going to be looking at double, perhaps even as much as three times what IBC predicts, 15%-plus premium increases, on the basis of the reforms being proposed by this government." That's Zurich, the second-largest insurer. So even these guys haven't got their act together. The fact is that the premium payer, the driver and the consumer and the victims have not been well served. What's particularly upsetting about the regime with the private corporate insurance industry in Ontario is the lack of a real bonus malus system, and that is to say good drivers should be paying less, genuinely bad drivers should be paying more.

When we look to British Columbia we see an automatic discount, assuming they're good drivers, for seniors, which I consider a highly appropriate sort of measure, recognizing the importance that we heard earlier when CFAIR made their submission: one case study of a senior being denied the use of their car because of exorbitant and egregiously unconscionable rates. For many seniors, an automobile is freedom. For households, for mothers of young children, an automobile is more than just freedom; an automobile is a matter of life and death. It's a necessity for people living in rural communities where they don't have access to public transit. As if there were very many jobs to be had in this province, but it's a matter of whether you can work or not.

I'm concerned that this government is the third successive government to try to reform the private, corporate insurance sector. I could see that the last government wasn't capable of doing it, wasn't capable of whipping them into shape. The government before that wasn't capable of whipping them into shape. I can't think of any good reasons why this government is capable of whipping them into shape, especially after the industry itself talks about incredible premium increases even with the package that they basically have rubber-stamped.

Why isn't this government considering and looking at the Insurance Corp of British Columbia, among others, or Saskatchewan or Manitoba, the public insurance systems? They range from no-fault in Manitoba, which uses a Quebec-style no-fault, to tort-dominated with no-fault provisions in British Columbia, all of them providing lower average premiums than we have here in Ontario. Why isn't the government taking a look at those? Why is there this bias against publicly owned driver-owned insurance systems?

Ms Akeson: That's a good question. I don't know. I find this government difficult to understand at any point, particularly because we work with low-income people and it just seems that they're being hit over and over and over and over again at every level.

I see children who aren't eating. I see 10,000 kids in the middle of the city of Ottawa who are potentially going to be on the street because we don't have affordable housing, because we have slum housing, and when you cut back on welfare, they are very, very close to being evicted and there's no place to go. Once we have a generation of children who grow up on the street, our society will never be the same. Everything that happens affects them in the most difficult way, and this is one of them.

You talk about your rural areas and so on and so forth. For poor people, a car is essential. They just have to have a car to get around. They cannot afford public transit and they have to try and top up welfare. They have to try and top up minimum wage because you can't live on it. You cannot live on it.

Mr Kormos: That's right. Al Palladini would tell them, "Let them take a bus." The fact is this government has pulled the rug out from underneath public transit.

Mrs Marland: Thank you and good morning, Ms Akeson. I just would respond to our friend, our colleague across the floor, by saying if your government had got into government-run automobile insurance and had done as good a job as your government did with the Workers' Compensation Board, we would really be in a mess.

Mr Kormos: Oh, give me a break, Margaret. That was the Tory—

Interjections.

The Chair: If we could focus on questions to the witness, please.

Mrs Marland: I'm sorry, Ms Akeson.

Mr Kormos: You should apologize.

Mrs Marland: No, I'm apologizing to our deputation. We have a leadership race going on at the moment. Unfortunately, we have some of the people on the committee with us.

Your concerns address some of the concerns we are hearing. In some cases, for example, some companies now do have rates for seniors. I happen to be married to someone who has one of those rates, being a senior.

My concerns have really focused around the fact that everything seems to take so long after an accident. I'm just wondering whether you have any advice for us to pass on to the people who are drafting changes to this legislation and also directly to the industry about how we can specifically address how people are dealt with after the accident.

Ms Akeson: No, we haven't looked into that. We don't deal with seniors. That is not an area that we deal with. We deal only with poor families. In terms of seniors, the only thing I know about it is my own situation. I've been driving a car since I'm 16. I'm now 64. I had one accident. It was a young male who had had 17 accidents who hit me, and my insurance went up. I couldn't believe it, and this was in Quebec. There are some real problems with insurance companies and car insurance, and why this young man is still driving—of

course, they have a no-fault thing in Quebec. However, I can't help you with that. I don't know. That isn't our focus. Our focus is totally for the bottom 20% of the population who are the poor families, the working poor and the welfare families.

Mr Ted Arnott (Wellington): Thank you for coming in today to outline your views on this issue, because it will be helpful to our committee and I certainly understand that your expressions are very sincere and complement you on the work that you're doing in your community to work towards greater social justice, as you see it.

Unfortunately, Mr Kormos has stepped out for a moment, but I wanted to respond to a point that he had made. He indicated and sort of implied that the Insurance Bureau of Canada, as well as one company, had indicated that rates will soar under this proposal. What he indicated, I think, was correct, but there's also another company that spoke to us last week, the Dominion Insurance Co, and they indicated that good drivers, they felt under this proposal, would receive a break relative to their policies. So that's good news for us.

I think that if we look at reducing the cost of the product to the insurance companies, they may very well, through a competitive marketplace, be able to offer at least rate stability and perhaps even lower premiums for certain drivers. That, to me, would benefit low-income people who frankly need a break.

In Wellington county, where I represent the people of Wellington county, there are a lot of people who are sort of at the border line who literally can't afford the insurance premiums they're being asked to pay. I'm concerned that more and more people are going to be driving without insurance if we don't get these rates under control.

Ms Akeson: One of the reasons the rates aren't under control are the huge profits these people are making. I really think that we have to take a look at this. Are we in the insurance business to ensure that citizens don't find themselves in terrible situations because of something they can't help or are we in the business to make sure that these companies make these huge profits and their shareholders do well?

I'm going to get off car insurance for a minute. We have a very small office. We had to have insurance because of a purchase of service agreement with the government, so we bought insurance. It was \$134 in 1992. It went up to \$550 this year, with no reason at all for this. So I tried to change what was in the contract because we didn't need half of the stuff in the contract. We weren't able to. I couldn't find another insurance company. There's collusion as far as I'm concerned. We could not get insurance for less this year. For what reason? We hadn't claimed on it, and they just decided arbitrarily, so we had to cancel our insurance. I think we have to look at the insurance companies, period, and how you're going to control that stuff.

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Mr Gerry Phillips (Scarborough-Agincourt): Thank you for the presentation. You're an important voice here for us, and I appreciate you being here because I suspect we won't hear as much from groups with less income as we will from people with more income.

One aspect of the proposed legislation is to expand what's called access to tort, I think, or more involvement by the court system in the auto insurance area. Can you give us any insight—I know you touched on it briefly in your comments—on the implications of that for people who may come from a background of lower income?

Ms Akeson: I think you can elaborate much more on it, but the fact is that it's very difficult now. Legal clinics are backed up, if you can get a certificate for legal aid, and then of course the courts are backed up. So if you're poor and you have an accident and you need benefits, it could be a long time, as I mentioned, before you can get those benefits, and for poor people, they can't borrow money. There isn't any way out. They either get help then or they're in real trouble. So I think our court system is a real mess and that has to be dealt with too.

So from the perspective of low-income people, anything that may be troublesome to the middle class is almost a life-and-death situation for them, and I'm not exaggerating here. I know this gentleman finds this strange, but I'm not exaggerating. If he saw how poor people live in the capital, he would feel very differently about his smiling on this issue, because it is not a funny issue. We have children who are literally—literally—doing without food every day in the nation's capital, and there's a lot of them. There are no jobs. There are no jobs in this city for people who are poor who aren't professionals. So all of these things, including the court system, including the lack of ability to get certificates when you need help, the whole system for the bottom 20% is bankrupt and falling apart, and this is just another example of that.

Ms Annamarie Castrilli (Downsview): Thank you very much, Ms Akeson, for bringing this very useful perspective. I've been troubled over the course of the hearings about some of the presentations that have come before us, primarily by insurers who seem to be talking about rate stabilization and give us figures that have a difference of about 15% between one insurer and another as to what rate stabilization means. I wonder, from a perspective of someone who works in the field with people who have to make do in very difficult circumstances, what you think of the statement that rate stabilization can mean as much as a 15% increase in rates over one year.

Ms Akeson: When I think of that, it's impossible for poor people. It just is impossible, and if we're going to look at a system that is only for the middle class—and increasingly the middle class are finding this is not so easy—then I don't think that we have a very democratic society. I think the poverty that hit this country started in the 1970s when we first started to see people on the streets. We hadn't seen that since the Depression, and yet we tend to blame the victims; we blame the poor. You're lazy, you're stupid, you're something.

Now that the middle class are beginning to lose their jobs, they're beginning to realize poverty means you don't have any money and you don't have access to money and you don't have access to jobs. As more and more people come to grips with that, maybe we'll be able to deal with some of these situations. But it's been so easy to blame the victims for the last 15 years, and I'm

concerned that in doing that, because we've had it so good at the middle-class level, we just lost touch with the implications of some of our decisions, and—

The Chair: I'm afraid we're out of time.

Ms Castrilli: I'll ask you the question later.

Ms Akeson:—what people will do if they have to pay such high rates, the people you represent, but—

The Chair: Thank you very much for your presentation to our committee. We appreciate your input into our deliberations.

Ms Akeson: Thank you. I hope it helps.

Mr Kormos: I can explain why some members of this committee feel comfortable smiling in response to your presentation, because in addition to their salaries, they grab over \$100—

The Chair: Excuse me, Mr Kormos. I believe you're out of order.

Mr Kormos: That's more than David Tsubouchi tells a single person on welfare—

The Chair: Mr Kormos—

Mr Kormos: That's why they can smile.

Mr Rob Sampson (Mississauga West): Mr Chairman, on a point of order: I want to draw to the attention of the member on the other side of the table here that I was speaking with Ms Castrilli about the matter of access to legal items. I was not smiling as a result of the comment the deputant was making.

Mr Kormos: I was speaking about \$100 daily for a tax-free per diem—

The Chair: Thank you for your presentation to our committee, and I apologize for the—

Ms Akeson: May I please add one—

The Chair: You had one final comment?

Ms Akeson: My comment is that I like the idea of—we may be able to work through that, but it is extremely difficult. As you know, I did not bring extra copies of our little report because we don't have the money to do that. There is no money for voices for the poor, for the bottom 20%, and so it is very difficult for all politicians to hear very much about what's going on, because there just is not any money for that kind of support for the bottom 20%. I hope you think about that, because otherwise you will not get that piece of information you need to make the right decision. When you talk about \$100 day, from our perspective that is exorbitant. However, if you do want to hear from the bottom 20%, there are going to have to be vehicles and some way that can happen.

The Chair: Thank you very much for your input.

ONTARIO COALITION FOR BETTER CYCLING CITIZENS FOR SAFE CYCLING

The Chair: We now welcome the Ontario Coalition for Better Cycling, Mr Delmage.

Mr Avery Burdett: My name is Avery Burdett and I am chairman of the Ontario Coalition for Better Cycling. The Ontario Coalition for Better Cycling is an umbrella group of regional cycling organizations, and our role is that we endeavour to speak on behalf of cyclists who use the roads in Ontario, all roads, not just provincial roads. We're sharing the session with my colleague here from Citizens for Safe Cycling.

Mr Brett Delmage: My name is Brett Delmage. I'm a nationally certified defensive cycling instructor. I'm also president of Citizens for Safe Cycling, a non-profit, member-based association that promotes cycling as a mode of transportation in Ottawa-Carleton. Citizens for Safe Cycling is a member of the Ontario Coalition for Better Cycling and we work together with them.

Mr Burdett: Before we give you our position on the auto insurance reform we'd like to just give you a few facts about cycling, since there are many myths about cycling, and part of these are unfortunately promoted by the provincial government, so we'd like to take every opportunity to put some facts on the table.

Cyclists, as you know, are very vulnerable to serious injury at speeds of less than 50 kilometres an hour when involved in collisions with motor vehicles, and all cycling deaths in the regional municipality of Ottawa-Carleton in the last 10 years resulted from a collision with a motor vehicle. However, most cycling crashes do not involve a motor vehicle. Cyclists, as you know, have a right to use the road system in Ontario without a requirement to be licensed or insured, and as many as 5% of Ontario's population use a bicycle as the primary form of transportation. Many of these may not own an automobile or be insured under an automobile policy. It's doubtful whether any significant number of cyclists actually carry general accident insurance, which is the other way they could cover themselves against injury or accident.

1020

Despite this and given that background, over 50% of Ontarians use a bicycle for recreation or transportation and that's according to the 1994 provincial government survey. However, only 2.5% of all road fatalities and 3% of serious injuries in Ontario are suffered by cyclists. Just to give a bit more context, for every 40 fatalities on Ontario roads, 34 are motorists or passengers, five are pedestrians and only one is a cyclist.

Cycling is really a very inherently safe activity, provided cyclists operate their bicycles as a vehicle; in other words, they follow the rules of the road. Competent cyclists, or at least the principles of competent cycling can be taught to children as young as 10 years of age and they can absorb those principles.

The other fact is the competent cyclists have actually lower serious injury and fatality rates per kilometre than motorists, so that might surprise a few people, but none the less cyclists are vulnerable when they actually do get into a collision with an automobile.

Cyclists rarely inflict serious injuries on themselves or other road users, so they're very vulnerable, as I said originally, to being hit by a motor vehicle when they do get into a collision. One of the other factors is cyclists whose primary mode of transportation is a bicycle are likely to be among low-income groups and students, and of course cycling is a very economical way of getting to work, to schools or for other utilitarian purposes.

When we look at those facts in the context of the role of motorists, motorists benefit from a number of subsidies. Many of them are hidden. An example of this is the government-funded health care for victims of motor vehicle collisions. In its March 1994 report, Ontario's safety research office estimated the social cost of Ontario

motor vehicle crashes to be \$9 billion annually—that was in 1990 dollars—and \$7.3 billion of that value was placed on the human consequence of crashes, and the remainder is value of property and time and material expended on crashes.

Locally, according to The Total Cost of Travel in the Regional Municipality of Ottawa-Carleton, recently published by RMOC, by the municipality, costs to society not covered by insurance premiums were estimated at \$243 million, and that was in 1993. The total annual subsidy to automobiles is estimated to be at least \$315 million, compared to \$80 million for public transit and less than \$7 million for cycling.

That provides you with a bit of context concerning our position. What we are concerned about, the material we've received, is that it constantly refers to the insurer's responsibility to the insured. We believe it's an incorrect assumption that all parties injured or suffering damages from automobile collision have insurance. Many cyclists do not own cars, as I mentioned before, and have no car insurance.

We don't believe that the costs and the consequences in motor vehicle ownership and use is adequately borne by motorists, either through the taxation system or indeed the insurance system. Of course we believe that motorists should more fairly bear the full costs of their choice of travel. So we welcome the principle that the province will seek to recover some of the costs of victim health care from insurers, although it's not clear to us in looking at the paper which costs will be recovered; there seems to be some limit on what types of costs.

We'd like to see this principle extended to cover all costs where it's practicable and economically efficient to collect, including emergency hospital treatment, ambulance charges, the costs of police services and the costs of fire department services. In fact, locally here a number of municipalities have decided to charge motorists for use of fire department trucks if that's required in their municipalities. I'm thinking of Nepean as one. But none the less, the province can probably play a stronger role in recovering the full cost of collisions.

We have concerns about the reductions in the amounts of compensation to be paid to victims of motor vehicle collisions. There is a high proportion of low-income earners among cyclists who use a bicycle as their primary or only means of transportation and their ability to sue for losses above these proposed maximums is limited. Clearly, the lower down the scale—and I'm thinking of those who would be entitled to claim \$400 a week, but somewhat less than, say, \$50,000 or \$60,000 annually—their ability to sue would be constrained and it's likely they probably wouldn't sue.

We are concerned also on the restrictions on students. It seems to be unjust. Students are high users of bicycles as a means of transportation. They're particularly vulnerable in collisions with cars because of the high usage rate. We believe that students should be permitted to claim for disrupted studies and loss of future income.

That essentially is our presentation.

The Chair: Thank you. Mr Delmage, do you have a presentation as well, or should we move to questions?

Mr Delmage: No, we share the same position. It's been developed jointly.

Mr Sampson: Thank you very much for your presentation. This is the first one representing cyclists. It's often a difficult issue to deal with in trying to understand how you compensate the various victims when a cyclist is involved in an accident with an auto. Under the current legislation and under the proposed legislation, it's the auto policy that would pay the benefit, as you know.

The difficulty is what happens when the cyclist has his or her accident and there's no car in sight, so to speak. The expenses associated with that recovery would be recovered by the public purse, as you know, because they'd have to go to the OHIP system for medical expenses associated with the necessary recovery.

What we've tried to do here is to reintroduce a level of tort to give back to the cyclists, whether it be a student or whomever, the right to sue the at-fault motorist, which I gather is the majority of the incidents where the two are involved, so give the cyclist the right to sue for the loss of income and expenses over a certain no-fault benefit for medical expenses, but it's the motorist's policy that would pay. We've tried to deal with that very difficult situation where you have an insured vehicle having a collision with an uninsured vehicle, so to speak, a cyclist.

We've tried also to deal with the student comment you had, that the student needs to have some access for the loss of future income etc. That is actually brought back for the student under this proposal; under 164 it's just not there. So I think we've tried to deal with that very delicate balance between the cyclist and the auto when they are involved together in an accident, but I'd appreciate any further comment or advice you could give us as to how we can fix up that item with regard to the fault side, with regard to the no-fault side. Would you be proposing some sort of an insurance program for cyclists?
1030

Mr Burdett: I think the issue here is low-income users of bicycles. Although you're quite correct that the individual has the right to sue the at-fault driver, practically speaking, the people who would be capable of doing that are not likely to be on a bicycle, because of the fact that low-income groups do use a bicycle in higher proportion as their only means of transportation. So while yes, they have the right to sue, practically speaking they probably don't.

Mr Sampson: But in the category of a student who was on his bike or her bike off to classes one day and got run over by an at-fault driver, a significant reduction in income, maybe the erosion of any possibility of future income as associated with maybe they were attending medical school or whatever, they would have the ability to sue for that loss of future income under this proposal.

Mr Burdett: I understand that, but I also understand there's been a reduction in the ability to sue under the proposed changes.

Mr Sampson: No, it's increased.

Mr Burdett: I believe \$185 a week was the maximum.

Mr Sampson: You're talking about the no-fault benefit that would be available.

Mr Burdett: Yes. You see, we're trying to distinguish between what an individual is entitled to and what an

individual has to sue for, and in the case of cyclists, as we've seen through court cases of recent fatalities, it's where drivers have been charged or were not charged to start with because it's been difficult, according to the police and the legal profession, to prove the fault of the driver.

For instance, typical, quite recently we've had some situations where cyclists have been rear-ended. The drivers claim they haven't seen them even though they've clearly been riding properly. There have been no skid marks, therefore no way for police or lawyers to reconstruct an accident or a collision. We prefer to call them collisions, because accidents are avoidable; these are collisions.

So there's a greater difficulty for cyclists to sue. The courts are generally more generous to motorists and give them the benefit of the doubt. So again it's a somewhat theoretical proposal, that the right to sue is for cyclists. It's not as clear-cut as rear-ending another car, where there's clear damage, where there are skid marks etc.

Mr Phillips: I'd like to follow up a little bit on Mr Sampson's line of questioning. I understand the reduction in the benefits one, but I'm trying to understand your first paragraph on your recommendations, or your position, where you say: "The incorrect assumption is all parties injured or suffering damages...have insurance. Many cyclists do not own cars and have no car insurance."

What are you recommending that we try and do with this legislation to address your problem?

Mr Delmage: It reads like automobile drivers, motorists are the only parties involved here and it should be more clear, because we certainly had difficulty reading all the documents as to what the status of uninsured pedestrians and cyclists is.

Mr Phillips: Your concern is of course just with an auto accident. Mr Sampson touched briefly on whether there should be any requirement for insurance not involving autos, but that's something you don't want to comment on today.

Mr Delmage: There is third-party liability insurance available for cyclists which can be purchased at a reasonable cost.

Mr Phillips: Yes, but one certainly doesn't need it to ride a bicycle.

Mr Delmage: Generally not, no.

Mr Phillips: I think Mr Sampson explained that if you are riding a bicycle and someone runs into you, if the motorist is at fault, you're covered. You're clear on that in the legislation, I gather.

Mr Delmage: Yes, except with reduced benefits. Every mentioned the problem: the practical difficulty versus the reality of reclaiming against the damages.

Mr Phillips: I understand the concern about reduction. I'm trying to get at what wording you would like in the legislation to address the problem that you have in the first paragraph here.

Mr Delmage: We don't have any recommendations other than to say send it back to your staff to make it more clear in the documents where a cyclist specifically fits in. The words should appear in there, because the word "insured" doesn't address cyclists as it stands.

Mr Phillips: Okay.

Mr Burdett: In fact there is wording, I don't recall quite what it is, which suggests that uninsured—it refers to the uninsured, which includes cyclists—would not be entitled to claims. I'm sure that was not intended to include cyclists; I think it's uninsured motorists. But there was some wording in there, and I don't recall quite where it was, in some of the papers I got. So there is an underlying assumption that we're talking about motor vehicles, and insured motor vehicles.

Ms Frances Lankin (Beaches-Woodbine): I think that's an interesting point, and we'll have to take a look at it. I'm not sure whether you in your analysis have actually found any problems in the wording that would cause a problem in access to benefits or access to the coverage that would be entitled to you under tort or under no-fault, but you're just asking us to make sure that in fact is the case. This would include pedestrians as well.

Mr Burdett: Yes.

Ms Lankin: Okay. I think that's something that we could easily take a look at.

I understand the points that you're making and I think you make a particularly good point about the difficulty, in a tort system, of proving fault when it's between a large motor vehicle and a bicycle when there are so many attitudinal problems of motorists towards cyclists, the sort of attitude that cyclists weave in and out and are a problem, that they're not safe cyclists. I think we've seen a tremendous education program take place over the last number of years and a lot of people who are very conscious of safe road rules for cycling. If only motorists were as conscious with respect to cyclists, there would be a lot less problem.

I think that's an interesting point. Do any of your organizations follow court cases that have ever emerged involving this? Are there any stats or stories that could be collected and sent to us as a committee to look at this? I think in effect you've raised an interesting point: If it's not possible in many cases to determine fault, then how does that innocent accident victim actually get justice through the restoration of tort when the no-fault benefits are being reduced so significantly?

Mr Burdett: The answer to the question, do we have cases or statistics, is no. We are very limited in our resources, and as you can see, we don't have legal counsel here today, but we do track some of the more serious issues regarding the laying of charges. I guess that's another issue. But our experience is that cyclists who use the roads legally have great difficulty in getting justice through both the legal system and I think recovering loss of income also. I think they're tied together. If you can't get a charge laid, it's likely that you're not going to be able to find an at-fault driver if there's a dispute.

The Chair: Thank you, gentlemen, for combining and presenting your presentations to us today. We appreciate your input, a different perspective entirely.

1040

BICKERTON BROKERS ONTARIO LTD

The Chair: We now welcome Bickerton Brokers Ontario Ltd. I understand that Mr Bickerton is having difficulty on the roads this morning and Mr Berlis is going to make the presentation for him. Welcome to the

committee, Mr Berlis. We appreciate your standing in on short notice.

Mr Mike Berlis: I appreciate your allowing me to be a last-minute substitute. Al Bickerton was to be here from Gananoque but he felt the driving conditions this morning were a little treacherous, so he did not want to have a car accident, which is what was important. So with your permission, I'd like to read his presentation which was sent to me late yesterday. I think most of you will have copies of it.

My name is Mike Berlis. I'm an insurance broker in Ottawa. Al Bickerton is president of Bickerton Brokers Ontario Ltd, which he owns together with three other partners. They are a medium-sized general insurance brokerage located in Kingston and Gananoque. Their client base of about 6,000 customers is made up mostly of personal lines insurance consumers. Approximately 55% of these consist of Ontario auto insurance policies. They've been servicing their clients since 1949 and are currently in an expansionary mode, adding new sales and service staff to their present staff of 16. This expansion is taking place because of the strong pro-business approach being taken by the current government of Ontario. They feel confident about the future.

Mr Bickerton has presented papers previously at similar committees in 1990 and 1993, during earlier revisions to the Ontario insurance product. In those presentations, he tried to emphasize the importance of making the Ontario auto insurance policy as easily understood as possible. Our customers appreciate the need for security in the operation of vehicles but they do not appreciate the uncertainty and confusion resulting from unending changes, many of which were unquestionably true of Bill 164. In fact, in reply to one panelist's question at the Bill 164 hearing about his gut feel, as a broker, of the changes being brought about, Mr Bickerton replied he did not feel customers could afford the product. This time, we are encouraged that the industry is being listened to. For the sake of Ontario consumers, we need to get it right and we need to be able to afford it.

Where are we going with the proposed changes?

There is no doubt that replacing Bill 164 is a good move. The proposed changes are an excellent start at the reform required. I do not intend to analyse each section of the proposed policy, since there have been many submissions already made to you which have done a far better job than I could. I will state, however, that the changes are being embraced by most insurers with whom we deal as at least a start towards a system which can be more accurately controlled.

Brokers and our customers have become fed up with the cases of fraud perpetrated upon insurers, and hence upon consumers of insurance such as you and I and all customers, by greedy criminals and those professionals from the disciplines of law and medicine who have collaborated in these sometimes elaborate schemes to steal money from the system. I feel the provisions of the proposed legislation are a good start at controlling this situation.

I also feel you should consider making the penalties for perpetrating or collaborating in these schemes much

stiffer. They should include the seizure of property to repay damages, in addition to prison sentences. We must make all those associated with this disgusting practice fully accountable on a joint and several basis. A few very harsh examples of penalties imposed will send a very strong message to would-be criminals.

We applaud your support for increasing fines for driving without insurance, but we also feel that these penalties should be made much harsher. The current fine and that proposed are still smaller than the cost of insurance that the driver should have purchased. The penalties should also include seizure of the vehicle until the fine is paid. Perhaps a period of loss of licence would also be worth implementing.

I would also like to stress how important this legislation is to the stability of the auto insurance industry in Ontario. We have seen the constriction of the insurance market since the introduction of Bill 164. This was well anticipated by, and forecast to, the previous government in the hearings of the day. It was also ignored by the previous government. This has caused a major attitude shift by insurers away from wanting to write Ontario automobile insurance. Brokers have witnessed many insurers cancelling their contracts when loss ratios were adversely affected by the loss costs imposed by Bill 164, although brokers had no control at all over either coverages or loss costs. Many of these situations resulted from brokers having to place business under the "take all comers" rule and being impacted by the losses resulting from business that was sure from the outset to cause unusual loss costs but could not be avoided. We are grateful to see in the legislation some provisions to alter these rules and to revise the Facility Association provisions.

We also embrace the trend away from the entitlement philosophy of Bill 164 to an indemnity philosophy, which of course is the fundamental precept of insurance. Our customers can easily see why our costs have gone crazy when they see benefits being paid for no reason. One of our senior citizen clients, after a small accident resulting in some minor injuries being paid under section B, actually called me to ask if she could repay the insurer to save the system some money. She said she had no need to be paid, even though she had minor injuries. She actually felt guilty about accepting the money. Don't we all wish we had more people like this?

While this new proposed product attempts to provide a reasonable balance between tort and no-fault accident benefits, we feel more can be done to further strengthen the threshold. Indeed, OMPP, though it had a few problems which could have easily been fixed, was probably the best auto insurance product we have ever had in Ontario. If your committee continues to listen attentively to our industry's suggestions, I suspect we will not have to engage in another retooling of the system. Our clientele is crying out for stability in pricing. I'm very concerned that if access to tort is too easy, we run the risk of seeing premiums increase just as they did in the late 1980s. The introduction of contingency fees for legal representation will very likely exacerbate this problem. Please give this matter very serious consideration before allowing contingency fees into the auto insurance litigation loop.

Some additional suggestions:

In the interest of the consumer being able to understand another change to their coverage, I would strongly recommend the industry publish an easily read and easily understood explanatory brochure which could be distributed by insurers.

We feel that the estimated future premium levels of 7% are still too high for easy assimilation by Ontario drivers. We ask that you continue to make revisions to the proposed legislation which will reduce those increases even more.

We ask you to consider making it possible that all Ontarians, and not just those of a particular affinity group, have the availability of using their other income support benefits to offset the impact of section B premiums. As brokers, we need a level playing field with group insurers to be able to offer all Ontarians the ability to use their other income and health payment mechanisms to offset the cost of section B premiums.

We support the general recommendations brought forward by the Insurance Bureau of Canada and its members, and have added a few items as mentioned above.

The overall message from my firm as brokers is to please make a product that the public can understand, that feels just and reasonable, and that is as consistently affordable as possible. I feel that asking the motoring public to accept a 7% annual increase for the foreseeable future is still too much. It obviously is much better than the double-digit increases of Bill 164, but it's still too high.

Please do not overlook the need to tell the public that achieving stability will not be done overnight; it will take a little time to let the new system develop its statistics.

Thank you for the opportunity to speak to your panel.

1050

Ms Castrilli: Thank you very much, Mr Berlis, for your presentation. I take it you didn't have to come from Gananoque?

Mr Berlis: I didn't, no.

Ms Castrilli: We're delighted to have you here. I'm interested in your comments on page 4 which talk about one of the four systems that has been introduced or considered in this province since 1989, and I'm referring specifically to the Ontario motorist protection plan. Mr Bickerton indicates that he thought that was a good system. In fact, information provided by the industry itself demonstrates that the actual cost of bodily injury and accident benefits was significantly lower during that period of time and then was up on either side, and also that the premiums that were paid were consistently lower, and sometimes even below the rate of inflation, during that period of time. I'm curious as to how you think you would tinker with the system. You say that this was a good system, it needed some modification. What kind of modification to it would you have seen, and are those modifications what you would see in this legislation, which seems to me quite different?

Mr Berlis: I think a lot of the modifications that have been put forward by the legislation are similar to an OMPP system, under the accident benefits section, and that's the main area that seems to be the problem. You're

right, statistically there was a short period of time where premiums seemed to level off and the system seemed to be working. I don't think there was enough time given under the OMPP system to really show a long-term effect of it, but certainly in those few years all graphs and so on have shown that it was at least a positive step in the right direction. I think this legislation is going in that same kind of direction, which is positive.

Ms Castrilli: I question whether that's true, because insurers have told us that under this proposed legislation we're going to see increases of anywhere from 7% to 15%, depending on how you calculate it. So it doesn't look to me like there are going to be reductions. That's a per annum figure over the next four or five years; we're talking somewhere between a 30% and 40% increase. I wonder if that really is a fine-tuning of the system to bring it back to what was working.

Mr Berlis: I think the idea of the 7%, which is a prediction, obviously, certainly is not good enough but it's far better than it would be if the current system remained in place. At this point in time, I think they're talking about at least double that kind of percentage increase. So it's a step in the right direction. There are further steps that can be taken and hopefully will be taken to reduce that even lower. It's always a difficult thing to predict what's going to happen in the future, particularly in insurance, but I think that at least gives us an indication that it's going in the right direction. It's lowering what would happen if we didn't make the change.

Ms Castrilli: Can brokers sell a 7% to 15% increase every year for the next four or five years?

Mr Berlis: Not willingly, and it's certainly very difficult to do. As brokers, we have had that trouble in the last few years. It's a very, very difficult thing to do. There are certain steps that consumers can take with deductibles and coverages and so on to offset some of the increase, but at some point in time the increases are just inevitable. That's very tough and it's not a pleasant thing to have to deal with.

Ms Castrilli: Not for you on the front lines.

Mr Berlis: Not at all, no.

Ms Lankin: I'm interested in the comment that you made in your presentation about not overlooking the need to tell the public it will take some time to achieve stability, and you reinforced that comment in your response to Ms Castrilli, in talking about the fact that we didn't really have enough time, even with OMPP. Let me put this to you, because I feel a little frustrated sometimes as I hear people talk about Bill 164. First of all, you said it would be at least double the increases projected for under this legislation. In fact, the insurance industry's projections were about 11% to 12%, not 14% and up. I think that's way too much and I think there are things that needed to be done within the system, but I also question the number. We see this year, when the projections had been for a 12% increase, on average the increase across the industry seems to be coming in about 9.5%. We also see, if we go back—and I looked at the presentations before the standing committee dealing with Bill 164—that the insurance industry was predicting 9% to 10% increases in OMPP premiums starting to kick in.

It takes time for any system to settle out. People are starting to say, and I've heard from folks in the rehab field, that insurance companies that were beginning to understand effective rehab management and managing their costs were able to bring their costs down. There are insurance companies out there with zero to 2% increases projected over the next couple of years because they had good fraud management and good case management.

So I come back to that we really have to take a look at what is the product that we want to deliver. I understand the industry's position about a move from an entitlement to an indemnity. I guess my problem is the vehicle by which that's being delivered, reintroduction of tort. I remember back in the days before OMPP—and the whole mechanism and process of what we went through there had a lot to do with the outrage about increasing premiums in those days—when that was a more heavily tort system. In terms of your brokerage firm, you're saying that you agree with the return to tort but you want to see higher thresholds. Can you explain that to me, because in there you're just going to transfer the costs which are now going into delivering rehab benefits and health care to people into a court system, and I'm not sure how that is better.

Mr Berlis: I think one of the problems with the system is that it is a complicated system. If it weren't complicated, if it were either, "Let's go tort," or, "Let's not go tort," that would solve the problem. That would be a much easier thing to do deal with. This whole process is an example of how complicated a system it is. I think to find the balance between some tort and getting away from tort and so on, just trying to find that balance is very, very difficult.

In terms of trying to deal with statistics and trying to predict figures and percentage increases and so on—I'm certainly not an actuary, but even the actuaries in the business trying to look at systems—it does take a long time to build up stable statistics over periods of years. One of the problems in the Ontario automobile insurance system has been that we've had now a number of systems in the last number of years, so to try to make any prediction on looking at the past and trying to say this is what's going to happen in the future is virtually impossible, I think. We've taken our best guess, and the actuaries put together as many statistics as they can to make the best guess.

Mr Douglas B. Ford (Etobicoke-Humber): Thank you for coming, Mr Berlis. Myself, I don't believe that there is a perfect solution to the problems, but I am suggesting that we review various insurance policies around North America and around the world, come up with some new ideas and see if we can get an amicable situation for people cost-wise and benefit-wise. If we review these other areas, we might be coming up with some fresh ideas from a different approach so that we can give a fair appraisal of what is needed. There's no true solution, so to speak, but this is what we will be trying to do, because we've heard many, many people come up to this committee giving us their views, but they all seem to come around the same issues as the insurance before or the perceived future, but a fresh approach, that's what we're looking at.

1100

Mr Berlis: That's really refreshing. We certainly approve of that kind of thought.

Mr Ford: This is what we're trying to do, and this committee is working on this. I don't think it should be really rushed through in a panic to get the solution, but we should come up with new ideas and a fresh approach on this. I just wanted to let you know that.

Mr Berlis: I appreciate that and certainly I agree with the comment about not trying to rush this through. It is more complicated than people think.

Mr Ford: That's right, it is.

Mr Berlis: As you delve into it, you can see how some of those complications are coming out.

The Chair: Thank you very much. We appreciate your presentation before the committee today.

Mr Berlis: Thanks again for coming to Ottawa.

JACQUES BUY

The Chair: We would now welcome Jacques Buy to the committee. Thank you very much for joining us this morning, sir. I understand Mr Buy's presentation will be in French.

M. Jacques Buy : Je voudrais tout d'abord remercier le gouvernement de l'Ontario.

Panne électronique.

M. Buy : — s'intéresse et s'approche du public pour lui demander son opinion sur une loi qui doit être modifiée, et je voudrais surtout remercier le comité permanent des finances et des affaires économiques de me recevoir aujourd'hui.

Je voudrais rappeler tout d'abord que l'assurance-automobile, faire assurer sa voiture, est obligatoire par la loi. Tout ceci se trouve au moins en tête de ma préoccupation.

Mon objectif est de montrer que les compagnies d'assurances, en tout cas plusieurs d'entre elles, sont incapables de gérer le système des assurances-automobile sans chercher un profit maximum au détriment de l'assuré, qui ne peut se défendre. Et je voudrais montrer que, pour se justifier auprès du consommateur sur un accroissement des prix absolument invraisemblable, les compagnies d'assurances renvoient le consommateur au gouvernement de l'Ontario en disant, «Les mesures que nous prenons nous sont imposées par la Loi sur l'assurance-automobile.»

Les faits qui me concernent, puisque je ne suis qu'un exemple parmi tant d'autres : mon cas est simple. Je conduis depuis 40 ans, en Europe et au Canada. En 1986, j'ai fait assurer un premier véhicule par la compagnie Zurich à Ottawa. En 1990, j'ai fait assurer un deuxième véhicule par extension du contrat. Depuis huit ans, je parcours plus de 60 000 kilomètres par an. Je n'ai jamais perdu un point de permis de conduire. J'ai eu deux accidents mineurs, l'un en janvier 1991 sur une plaque de verglas sur une autoroute, ou j'ai perdu le contrôle de ma voiture mais je n'ai touché personne, et en octobre 1994, où j'ai eu une collision lors d'un freinage, le dégât se situant au niveau de mon pare-chocs avant et du pare-chocs arrière du véhicule qui m'a précédé. Le coût pour ma compagnie d'assurances était de 1600 \$. Je lui avais

payé jusque-là 16 000 \$ de primes au cours des 10 années ou près de 10 années d'assurance.

Au moment où j'ai eu ce second accident, est c'est un fait que j'ai noté, il n'y a eu aucune réaction, ni de mon courtier ni de la compagnie d'assurances et mon contrat se renouvelait au 28 juillet 1994. Le 6 juillet, mon courtier m'envoie une lettre en me disant, «Zurich ne veut plus vous assurer», sans explication. Le contrat se terminait le 28, mais dès les délais de poste, j'ai reçu cette lettre aux environs du 12 juillet.

J'ai pris contact avec mon interlocuteur à Ottawa, le courtier, et au cours d'explication que j'ai pu avoir avec lui, je me suis entendu dire que j'avais eu deux accidents en cinq ans, que cela équivalait deux accidents à quatre étoiles, me disait-il — étoiles ou points, je ne sais ce qu'il faut employer — quatre étoiles égale un conducteur à risque, et un conducteur à risque doit être renvoyé à la compagnie d'assurances qui s'appelle Facilities Insurance, au coût de 4000 \$ minimum pour assurer un véhicule.

Après discussion avec le courtier et au téléphone avec un employé de Zurich, j'ai pu obtenir que cette compagnie me réassure. Elle m'envoie un contrat. J'ai demandé, en voyant ce contrat, à rencontrer la responsable du service qui s'occupait de ce contrat chez Zurich.

Vous êtes venus de Toronto pour nous écouter ici à Ottawa. Je peux vous dire qu'à Ottawa, la compagnie Zurich refuse d'écouter ces clients lorsqu'ils ont quelque chose à négocier ou à discuter avec eux.

Finalement, lorsque j'ai reçu ce contrat et une analyse — vous les trouverez dans le document que j'ai déposé — on s'aperçoit que les postes augmentent de 134 %, 218 %, 222 %, 312 %, 120 %, 148 % sur le total du montant de l'assurance, passant donc de 1242 \$ le contrat de l'année précédente à 3085 \$ le nouveau contrat. Je me trouvais dans l'incapacité totale de payer un montant d'assurance pareil que je trouvais de toute façon exorbitant, et en discutant, la seule solution qui m'a était suggérée est d'enlever certains risques. J'ai fait enlever, pour un total de 870 \$, les risques couvrant mon propre véhicule. De 3085 \$, j'aurais dû passer à un contrat de 2215 \$.

Je reçois un nouveau contrat qui est de 2431 \$, et je m'aperçois que tous les postes ont été augmentés, sauf deux, par rapport au contrat précédent de 3000 \$. Autrement dit, si je demande à la compagnie d'enlever certains risques pour diminuer le montant du contrat, elle s'empresse d'augmenter la valeur des autres risques pour réaugmenter de nouveau ce contrat.

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Je veux montrer par là que ce qui anime cette compagnie, c'est uniquement la recherche du profit maximum et non pas la simple garantie de risque avec un profit raisonnable auprès de ses clients, clients qui lui sont envoyés par la loi.

Je considère cette attitude de la part d'une compagnie d'assurances comme étant proprement indécente vis-à-vis de ses consommateurs. Toute demande d'explication — vous trouverez dans les annexes que j'ai déposées une lettre de mon courtier qui me dit qu'il n'est plus nécessaire de lui téléphoner ni de téléphoner à la compagnie Zurich. Je dois payer ce que la compagnie m'impose.

Selon Statistique Canada, le poids des dépenses des Ontariens en assurance-automobile est de 3,4 % de leur revenu net. Du 28 juillet 1994 au 27 juillet 1995, mon assurance m'a coûté 3,1 % de mon revenu net. Je passe tout d'un coup à 7,7 % sur le premier contrat que Zurich m'envoie, et 6,1 % sur le second. Je pense que, proportionnellement au revenu, c'est quelque chose de tout à fait anormal.

Or, selon le Bureau de l'assurance du Canada, en Ontario les dégâts matériels représentent à peine 14,5 % du total des sommes que ses compagnies d'assurances paient pour les risques qu'elles couvrent, ce qui veut dire que les dégâts matériels ne représentent qu'une part relative faible des risques qui sont pris par les compagnies d'assurances. Et on m'y situe immédiatement alors que les deux accidents que j'ai eus sont deux accidents mineurs de dégâts matériels uniquement. On me situe immédiatement au maximum de ce qui peut être appliqué à un assuré en lui attribuant quatre étoiles ou quatre points, je ne sais pas, mais en disant, «Vous êtes un conducteur à risque, et quand vous êtes un conducteur à risque, il faut qu'on vous taxe au-dessus.»

Il n'y a aucun Code civil, il n'y a aucun Code pénal dans les pays occidentaux, dans les démocraties occidentales qui prévoit que l'on attribue le maximum d'une peine, quel que soit le degré de la faute commise. Ça n'a pas de sens. Je dirais que l'attitude de ces compagnies d'assurances est tout à fait amoral. C'est à dire qu'elles ne peuvent pas distinguer le mal du bien. Or, il me semble que s'il y a une loi sur l'assurance-automobile qui impose aux conducteurs de s'assurer, cette loi, comme toutes les lois, comme tout ce qui fait partie du droit se réfère à la morale qui représente lui-même un des fondements du droit, est-ce que les compagnies d'assurances sont au-dessus de la morale ?

Les compagnies d'assurances ne sont pas déficitaires, comme on tend à le faire croire en parlant tout le temps de la nécessité d'augmenter les primes d'assurance. C'est le Bureau de l'assurance du Canada lui-même qui publie des informations là-dessus, notamment son numéro de Perspectives de 1995 qui titre, d'ailleurs, lui-même ici, «L'industrie maintient le cas», et on peut voir que même pour l'Ontario, s'il y a eu des variations, elles ne sont pas si terribles que ça dans le cas de l'assurance-automobile. Les bénéfices de cette assurance sont de 900 \$ millions sur une année, et on vient nous dire ensuite — ceci a été déposé devant vous dans un rapport le 19 février dernier — on nous annonce par là une augmentation d'ici la fin du siècle, dans les cinq ans qui viennent, une augmentation des primes d'assurance-automobile de l'ordre de 8,6 % si le gouvernement de l'Ontario intervient pour modifier la loi au profit des compagnies d'assurances, ou, sans intervention de la province, de 16,8 % par an.

L'inflation au Canada et en Ontario est bien inférieure à 2 %. De quel droit ces compagnies se permettent-elles de faire augmenter l'inflation, de provoquer une augmentation de cette inflation simplement pour le plus grand bénéfice de leurs actionnaires ?

Ce que je demande, c'est en fait qu'il y ait un contrôle plus strict des tarifications des compagnies d'assurances. Le grand projet de loi sur l'assurance-automobile du 9 février 1996 ne fait pas état des réévaluations qui de-

vraient être faites sur le système de classification des assurés par points d'accident. Or, si l'on regard les articles 410, 411, et 412, on s'aperçoit qu'il est très facile pour une compagnie, n'importe laquelle, de contourner ces articles tout simplement en renvoyant son client vers un groupe d'assurances qui a été créé par ces mêmes compagnies d'assurances qui s'appelle Facilities Insurance, où on envoie automatiquement les assurés en leur disant, «Là-bas on vous assure, mais vous payerez le prix maximum, 4000 \$, 5000 \$.» Ceci n'est pas normal.

Ce que je vous demande, en tant que résident de l'Ontario — ce n'est pas seulement une demande ; je le réclame — je réclame la protection de mon gouvernement, protection contre l'arbitraire des organisations financières privées qu'il agréé pour faire appliquer les lois qu'il promulgue. Je réclame que la modification de la loi ne se fasse pas uniquement au profit des compagnies d'assurances, mais qu'on tienne compte aussi des assurés. Et je réclame qu'il y ait un contrôle pour cela, des compagnies elles-mêmes, pour vérifier dans quel mesure elles peuvent se permettre d'agir tel qu'elles le font, notamment en renvoyant leurs assurés vers ces compagnies dites de faciliter. Je vous remercie.

Mr Sampson: Thank you for your presentation. I will look over the documents you have left us which—I glanced over during your presentation—I think are the three insurance contracts you received from Zurich.

Just one brief question. In order to get to the \$2,431 category, if I read this very briefly, you took off one of the autos, the Mazda 323. Is that basically what you did to get the rate down?

M. Buy : Oui.

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Mr Sampson: You're right. One of the things you do not see in the legislation is an attempt to deal directly with the Facility Association issue. We feel that we had to somehow come to grips with what the auto insurance product was first before we dealt with the very serious problem as to how one deals with making sure that the high-risk driver pays the higher premium and making sure, frankly, that people who get classified into that category have an opportunity to earn their way out of that category. Currently, you do that by just basically spending time in that category and there may be better ways to do that. We're going to try to come to grips with that before we bring forward the final legislation.

One of the issues that we also have to come to grips with, frankly—I don't think anybody in Ontario would differ from me in this position—is that the high-risk driver, however that is determined, should perhaps be paying a higher premium to reflect the higher risk that they may get involved in another accident again and potentially have higher damages associated with that, because insurance is a pooling concept whereby you and I are in the same pool with a group of other individuals and it's the money we all contribute in premiums that's there to pay for the losses and the costs associated with those who get involved in an accident. So if there's a higher risk that there are people in our pool who will get involved in an accident, we are all going to have to share in that higher risk, and that typically ends up in higher premiums.

So I want to let you know that we will be looking at the Facility Association rules, the take-all-comers rule, the rule that says the insurance companies must take all insureds, to make sure that we have somehow, after we've redesigned the product, a much fairer system to deal with the fact that higher-risk drivers, however defined, pay for the driving habits they have demonstrated and are given the opportunity, I think, to earn back a better-risk driving rating over a period of time through something more than frankly just spending time in the Facility Association. That was more of a statement than a question, but you can respond to that if you wish.

M. Buy : Il est bien évident qu'il y a des conducteurs à risque. Les points de permis de conduire sont là notamment pour le montrer et pour les dépister. Mais qu'est-ce qu'un conducteur à risque s'il n'y a pas de définition ? La définition donnée par les assurances est absolument absurde. Elle est totalement absurde, et vous ne pouvez pas admettre que ces compagnies décident elles-mêmes qui est un conducteur à risque. C'est la loi qui doit le déterminer.

Or, la loi ne peut pas se permettre de dire que, quel que soit le degré de la faute, la peine appliquée sera maximum. Ça ne s'est jamais vu et ça ne doit pas se voir. Il ne doit pas y avoir de précédent dans ce domaine. Nous sommes dans une démocratie, donc vous devez pouvoir contrôler non seulement les compagnies qui assurent les conducteurs à risque, mais aussi les compagnies d'assurances qui envoient ces conducteurs vers ces compagnies qui assurent les risques.

M^{me} Castrilli : Merci bien. Votre histoire est tragique mais pas du tout rare. Nous avons eu beaucoup de personnes, des conducteurs qui ont eu des accidents mineurs et qui sont venus nous dire la même chose. Nous voyons maintenant un monopole des compagnies d'assurances et nous voyons que les conducteurs n'ont pas de choix, même pas pour faire appel quand leur arrive une situation semblable. J'ai une question très spécifique pour vous. Vous parlez de changer la loi. Qu'est-ce que vous dites spécifiquement à ce gouvernement, comment on pourrait vraiment changer la loi pour contrôler les compagnies et donner plus de choux au consommateur ?

M. Buy : Je ne suis pas juriste.

M^{me} Castrilli : Mais vous êtes consommateur et conducteur.

M. Buy : Voilà. Je dirais simplement que c'est une question de contrôle tant au niveau des règles de fonctionnement des compagnies d'assurances, règles selon lesquelles elles attribuent telle ou telle catégorie à tel ou tel client, lequel est un client obligatoire, n'est-ce pas ? C'est ce que je veux rappeler ici. C'est qu'on ne va pas s'assurer dans une compagnie d'assurances automobile tout simplement par plaisir. On y va notamment parce que la loi oblige. C'est la loi qui oblige. Donc, ces compagnies ont une clientèle qui leur est envoyé par l'État. À ce moment-là je pense qu'il est du rôle de l'État de contrôler la manière dont ces compagnies appliquent les règles que l'État édicte.

En ce qui concerne les articles auxquels je faisais référence tout à l'heure, je pense qu'il doit y avoir notamment un contrôle qui se fait au niveau du bilan des

entreprises d'assurances automobiles, parce que, lorsque pour justifier des augmentations de tarifs ou pour justifier des pertes qu'elles font au niveau des assurances, donc des paiements qu'elles font, c'est par leur bilan qu'elles le font en montrant des bilans déficitaires sur certains postes, vérifie-t-on ce que sont les transferts de bénéfices avant de passer au bilan sous la forme de perte, notamment dans d'autres compagnies ?

Cela, je ne suis pas non plus financier. Je suis démographe et économiste et je ne suis pas qualifié pour analyser un bilan, mais je pense que je sais suffisamment de choses sur les bilans pour savoir qu'il est possible de manipuler un bilan. Je ne dis pas que toutes les compagnies le font. Je dis simplement qu'il appartient au gouvernement de bien vérifier, quand ces compagnies d'assurances vont imposer des augmentations, que ces augmentations soient justifiées. Hydro-Québec se présente devant le gouvernement du Québec pour réclamer des augmentations de tarif que le gouvernement du Québec lui refuse. Mais Hydro-Québec est obligée de se justifier et on discute de ces dépens. Je pense que c'est la même chose pour les compagnies d'assurances. Ce ne sont pas des compagnies de l'État, ce sont des compagnies privées, mais l'État leur envoie la clientèle. Il y a là un lien qui doit être fait.

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Mr Tony Silipo (Dovercourt) : Merci, Monsieur Buy, pour votre présentation. Vous dites que le problème essentiel, c'est en effet le contrôle des compagnies d'assurances. Comme M^{me} Castrilli l'a indiqué, on a eu beaucoup d'autres présentations devant nous qui ont fait le même point que vous. Mais je crois que la chose à souligner, c'est que maintenant, avec la situation qui existe, vous savez que vous êtes catégorisé comme conducteur à risque.

Le problème, comme vous dites, c'est que ce sont les compagnies qui font cette détermination et qu'il y a peu de contrôle sur cela et, selon nous, cela devrait certainement être une chose à changer. On espère que l'attitude de M. Sampson, et du gouvernement de dire qu'on est prêt à regarder cette situation, à examiner ça et à faire des changements — on verra, mais c'est clair pour nous que ce que vous avez souligné ce matin est un des problèmes qu'il faut résoudre parce que c'est vraiment injuste d'avoir des conducteurs dans votre situation qui doivent continuer à payer au-delà de la norme pour une couverture normale.

The Chair: We appreciate your presentation to the committee and thank you for bringing your perspective before us today.

M^{me} Lankin : Est-ce que je peux avoir le même temps pour une question que M. Sampson a eu pour sa déclaration ?

The Chair: I'm sorry, you've been a little short. Would you like a very short question?

M^{me} Lankin : Merci pour votre présentation. Je regrette, je ne pense pas pouvoir poser ma question en français.

I would like to ask you about your comments on controlling profits to companies. One of the issues we have raised with the government is that the insurance industry has a system whereby a certain amount of the

moneys they take in from premiums is put on reserve to deal with liabilities in the future. From that, they earn investment income, which is part of what is shown in the eventual profit and loss, but of course the money on reserve is in fact deducted overall as part of their cost.

We've asked for some legislative research work to be done to determine whether or not there are some standards or rules or regulations that could be put in place to standardize the process of putting moneys on reserve. Currently, every company does it in a different way and it's very difficult for the members of this committee, let alone for members of the public, to understand what's happening behind the scenes in the insurance industry. I take it that might be one way of addressing the concerns you've raised and that you would at least be supportive of us as the legislative committee pursuing that form of regulatory investigation.

M. Buy : Je pense que la constitution de ce fonds de réserve est tout à fait légitime. Les banques constituent aussi des fonds de réserve, enfin, devraient le faire. Ce qui n'est pas légitime, c'est à partir du moment où ce fonds de réserve est constitué avant la fin du bilan, c'est à dire qu'il intervient dans la partie négative du bilan. Il intervient avant la déclaration des bénéfices des assurances, et je pense que ce n'est pas normal. C'est là un point particulier. Je crois qu'il y a eu 60 millions de dollars qui ont été déposés dans un fonds de réserve par une compagnie d'assurances qui a déclaré ensuite 10 millions de dollars de déficit, de perte. Alors là, il y a quelque chose qui n'est pas normal.

Mrs Marland: Mr Chair, I have a point of order, and I apologize to the next deputation. It should only take me a minute. I have a great deal of concern. I'm raising the point of order under standing order 20(b) and standing order 23(h), (i) and (k), and it's with regard to comments on the record made earlier this morning by the member for Welland-Thorold. Standing order 20(b) says there will be no interruption of other speakers. Standing order 23(h) says we are not allowed to make allegations, 23(i) says we also cannot impute false or unwavering motives, and 23(k) says we cannot use abusive and insulting language likely to create disorder.

I would ask the Chair if he would ask Mr Kormos, the member for Welland-Thorold, if he wishes to withdraw his comments made earlier this morning which in fact insult every one of the members of this committee, no matter which side of the table they're on.

It's normal for members to use some political rhetoric against the government of the day. I certainly have done that when I have been in opposition. But I have not behaved or said some of things Mr Kormos said this morning, and I think it's unfortunate when this happens in public—we're always in public—when we have deputations before the committee, Mr Chair, they are expecting us to say things that are factual and correct, and some of what Mr Kormos said this morning is not correct and not factual.

It's unfortunate when there is an aside comment going between—in this case this morning it was the parliamentary assistant and Ms Castrilli. Always during committee we are making side comments for information and asking questions, sometimes while the deputation is still before

us by necessity. When a smile was shown—I don't know whether it was Ms Castrilli or Mr Sampson this morning because I didn't see it—to go from that into the whole tirade Mr Kormos unfortunately entered into and then impugned all of us I find very distasteful, and I would ask you to ask him to apologize to the committee members and withdraw his comments.

The Chair: Does the member for Welland-Thorold wish to withdraw his comments?

Mr Kormos: I think this an important point of order, Chair. I think Ms Marland is concerned about the fact that I pointed out that members of this committee, in the midst of such despair and poverty as this province is experiencing under this government, are themselves collecting not only their salaries but tax-free per diems in the gross amount of—I was wrong. It wasn't \$100 a day; in fact it comes to \$103 a day.

I find it repugnant that government members who would support, endorse and articulate a tax on the poor and on working people, who would be receiving a submission by an advocate on behalf of the growing number of poor in the city, could sit here—

The Chair: Mr Kormos, could I ask you to stick to the point on withdrawing your comments?

Mr Kormos: I am sticking to the point, Chair. The fact is that it's repugnant that these government members are taking \$103 tax-free per diems in addition to their salaries, in addition to having their hotel rooms paid for, in addition to having their travel paid for, in the midst of this poverty; that they're doing it in conjunction with what is an attack on drivers and victims with an insurance scheme that's going to cause increased premiums.

I retract none of what I've said. I have no shame about what I said. It has to be pointed out. I will persist in pointing it out, as I did at Bill 26 hearings, until the public becomes concerned enough about it or until these people become embarrassed enough about it that they either donate their per diems to charitable causes—I would recommend things like people with AIDS, who are under attack right now because of hospital cutbacks, among other things—or until they refuse their per diems.

I'll put on the record that I have not accepted any per diems for any of the committee work for which I've been an actual member of the committee. I'm here not as a member of the committee today, but as a right as a member of the Legislative Assembly. On the two occasions when I did, I specifically indicated to the committee at Queen's Park that one was for the purpose of making a donation in that amount to the People with AIDS Foundation of Toronto. The second was with respect to seeding a fund to buy a cemetery monument for a woman who was murdered by this government when she committed suicide in the city of Welland after having her disability benefits cut off by Mike Harris and his attack on the disabled.

So no, I do not withdraw anything.

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The Chair: Thank you, Mr Kormos. I will take the matter under review. Thank you, Ms Marland.

Mrs Marland: Mr Chair, I have a further question. I should clarify that the imputing of motives wasn't around the area the member for Welland-Thorold was just

referring to; it was a number of other things he was saying. But since he has raised a legal per diem paid to committee members, is he putting on the record that he has never in his term of office in the last 10 years—I think you were elected in 1985—received a per diem? Is that what he's saying?

The Chair: Is that what you're putting on the record, Mr Kormos?

Mr Kormos: No. I put on the record exactly what I said. That was a question to me—

The Chair: Thank you very much.

Mr Kormos: One moment. That question was put to me. Chair, a question was put to me that I've determined to answer. Of course I have, but since this government has taken power and begun its attack on the poor of this province, I have not and will not accept any per diems for committee work. I find that intolerable, embarrassing and unconscionable in the face of the growing poverty among the women, children and working people under attack by this government. If these government members had any real sincerity about so-called cuts and slashing, they would forgo this little bit of the gravy train and stop porking at the trough and quit their oinking here and now.

The Chair: Thank you very much, Mr Kormos.

Mr Kormos: Thank you, Chair.

The Chair: We'll proceed with the hearing. I will take that under advisement, Ms Marland, and report back to the committee at a future date.

ROYAL OTTAWA HEALTH CARE GROUP

The Chair: We'll proceed with the Royal Ottawa Health Care Group, Dr Peter Henderson and associates. Welcome to the committee, gentlemen and ladies.

Mr George Langill: Thank you very much, and good morning to all of you. I'm George Langill, the executive director of the Royal Ottawa Health Care Group. With me are David Follows, the director of our Work Wise program; Dr Catherine Gow, a neuropsychologist at our rehabilitation centre; Dr Peter Henderson, a clinical psychologist and director of our chronic pain service within the Work Wise program. I believe all of you have a copy of our presentation. I will review it, and Dr Henderson will assist me in the recommendations portion.

As representatives of the Royal Ottawa Health Care Group, we are pleased to appear before the standing committee on finance and economic affairs as you undertake hearings on proposed changes to the automobile insurance act. We are here speaking before you today not only as hospital representatives but as representatives and advocates of people with physical and psychological disabilities.

The Royal Ottawa Health Care Group operates two hospitals: the Royal Ottawa Hospital, which offers health care services in mental health at its site on Carling Avenue, and the rehabilitation centre, located on Smyth Road, which provides specialized services in physical medicine and rehabilitation. Each is the major institution of its kind in eastern Ontario, providing comprehensive health care to individuals with physical disabilities and mental illness. Both are fully accredited teaching hospitals that provide comprehensive health care to the resi-

dents of the national capital region and outreach services within eastern and northeastern Ontario.

At the rehabilitation centre we provide comprehensive service to people with physical disabilities such as spinal cord injuries, amputations, multiple trauma, chronic pain and acquired brain injury. The rehabilitation centre's programs include the Robin Easey Centre, a community-based transitional living centre for individuals with traumatic brain injury, and Work Wise, a program of return-to-work services for individuals recovering from injury. Many of our clients are victims of motor vehicle accidents.

Our primary concern is that victims of motor vehicle injuries should have prompt access to the comprehensive health care services necessary to optimize their physical and functional recovery. The purpose of insurance is to provide resources to ease suffering and return insured individuals to their previous life functioning. Planned, coordinated rehabilitation, provided by qualified health care professionals, is a good investment, with returns for all concerned. The critical indicator of the automobile insurance system is outcome, specifically the optimal functional recovery of the greatest proportion of insured individuals.

The proposed legislation is a reasoned, workable plan that attempts to more appropriately assign benefits according to need rather than globally to all claimants. There is an improved balance between the rights of insurers and accident victims.

(1) The reforms, in terms of income replacement and entitlement, are cost-sensitive and eliminate the potential disincentives inherent to the present system. Income replacement is limited to those who had incomes, who earn amounts conducive to work return.

(2) The requirement of detailed treatment plans is consistent with college requirements of regulated health professions, as well as the development of clinical guidelines to ensure the provision of the most appropriate interventions, their evaluation, and responsible modifications in treatment strategies as warranted.

(3) Availability of treatment plans provides insurers with the necessary information to make informed decisions in a timely manner.

(4) Improvement of the designated assessment centre system through monitoring, detailed guidelines and standardization further enhances the responsiveness and credibility of the peer-based, independent dispute resolution mechanism.

Taken together, these features are refinements in response to problems experienced with Bill 164. The adjustments are reasonable. More importantly, the proposal maintains a system which promotes prompt access to appropriate treatment from qualified health care professionals of the insured's choice.

I'll now ask Dr Henderson to take us through the recommendation portion.

Dr Peter Henderson: Needs of persons with near-catastrophic injuries. While we are acutely aware of the need for cost containment in a workable insurance plan, we are concerned about the individuals who may fall short of the proposed "catastrophic" definition. It has been estimated that 0.5%—that's half of 1%—of the

accident population sustain catastrophic impairments to the extent that they are unlikely to work again; 97% of accident victims have injuries with benefit requirements of less than \$75,000. There remains 2.5% whose injuries may be complex, difficult to diagnose and treat, and whose recovery is likely to be prolonged, that is, greater than 104 weeks.

Examples of these would include, but not be limited to, single amputations requiring surgical revision, prostheses, psychological care and vocational training. Also included would be instances in which symptom development is delayed, as in moderate head injury without loss of consciousness. This possible 2.5% of accident victims are the people frequently seen by our programs. They would not meet the proposed "catastrophic" criteria and could be severely disadvantaged as a result. Failure to provide for this group is not responsible cost containment.

Delay of intervention prolongs or mitigates against functional recovery. Ultimately, the cost for rehabilitation and maintenance are borne not by insurers but an already overburdened social system, for example, welfare and the Canada pension disability plan.

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Our concerns with the proposed legislation relate specifically to this group, the 2.5%. The following points deserve consideration:

(1) The "catastrophic" definition needs to consider not only impairment but the associated disability. Rehabilitation has traditionally recognized that the absence of or impairment to a body part or function differs in its impact from person to person. Therefore, we recommend that catastrophic injury should be redefined to embrace the resultant disability in addition to the physical losses.

(2) Adopting a Glasgow coma scale score of nine or less as the sole criterion for brain impairment assumes that (a) all cases of possible brain impairment will be administered the scale, (b) the scale is sensitive to and predictive of long-term functional deficits, and (c) higher scores are necessarily non-catastrophic, without taking into account who the person is and their particular role in society at the time of the accident. These assumptions are highly debatable and may result in the inaccurate classification of victims. Our recommendation is that alternative criteria and mechanisms sensitive to the nature of brain injury and recovery are necessary to define severity and the impact of brain impairment.

(3) Service from doctors, physiotherapists and chiropractors is proposed to be available without preapproval from the insurer during the first six weeks following injury. Mention of psychological services is absent. Inclusion of psychology along with medicine, physiotherapy and chiropractic as potential providers facilitates the prompt identification and containment of psychological trauma which might otherwise prolong the rehab process. Critical incident debriefing is now widely recognized as a preventive measure and needs to be included as an option for the small percentage of individuals requiring it, in the interest of containing the longer-term costs. Our recommendation is that psychological services should be a benefit available without preapproval from the insurers during the first six weeks post-injury.

(4) The proposed income replacements after 104 weeks tend to be all or nothing. Those completely unable to engage in any occupation are eligible for benefit. Those below this threshold of total unemployment are ineligible. There is therefore no provision or incentive for a graduated return to work or part-time work after 104 weeks. This all or nothing approach is similar to that found in many long-term disability plans, which often results in litigation. The litigation process is long and the claimant often ends up on welfare. As in the case of Canada pension disability, such arrangements force claimants to prove disability as opposed to encouraging ability and individual productivity. Our recommendation is to extend benefits beyond 104 weeks in a manner that encourages and facilitates return to work. One approach would be to slowly reduce income replacement benefits over time. The residual earning capacity designated assessment centres should be maintained in order to provide independent determinations of insured persons' ability to return to gainful employment.

(5) No-fault coverage provides the insured with up to 104 weeks of attendant care and/or income replacement benefits following non-catastrophic injury. Tort action is available to those who require further compensation. However, tort action generally takes longer than 104 weeks to resolve. Therefore, for individuals who are non-catastrophic but have significant functional losses, tort action is not a realistic or a humane means to secure coverage. To address these concerns, we urge some flexibility for that 2.5% of accident victims whose disability is complex, whose rehabilitation is prolonged, but whose recovery potential is significant.

A level of disability between non-catastrophic and catastrophic should be defined and incorporated into the plan, as was proposed by the Alpha plan before portions of this committee, as I understand. Alternatively, a mechanism to allow reclassification to catastrophic on the basis of later assessment should be incorporated into the plan. Independent assessment could be provided by a designated assessment centre.

Mr Langill: Thanks very much, Peter. In summary, the proposed legislation makes some very real improvements to the existing legislation. These improvements remedy many of the problems experienced under Bill 164 through the development of a "catastrophic" versus "non-catastrophic" distinction. We have some reservations regarding the definition of this distinction and the implications it may have for the estimated 2.5% of accident victims who fall short of the proposed "catastrophic" cutoff. Our interest is in timely and effective rehabilitation. It is essential that accident victims are able to obtain adequate coverage and are given an incentive to return to work, on a less than full-time basis if their injuries prevent full-time work.

We believe that addressing the above concerns will help to decrease the costs to accident victims, to the health care system and to society. We thank you for this opportunity, and we're more than happy to respond to any questions.

Mr Crozier: Thank you, and good morning. In the short time we have, I want to seek your advice in that yesterday or the day before—I think it was yesterday—

we had a presenter who was caught in the system, caught in this area you might describe here as "difficult to diagnose," and I'm not so sure about the treatment in this case. You might also comment on the delay of intervention that prolongs or mitigates against functional recovery. This person was injured under 164, but I'm not so sure it wouldn't continue into any plan we might devise. She was caught with an insurance company trying to prove she was not catastrophically disabled, even though she was literally bedridden, with the exception of her own personal needs she needed help with.

Why is it and will continue to be so difficult to convince an insurance company when there is medical evidence on one hand that this person is catastrophically disabled but the insurance company appears to be continuing to attempt to prove that the person is not? Is there any easy answer to that?

Mr David Follows: There is no easy answer to that question. It may be in part that the stakes are very high, especially with this new plan. The difference in liability for an insurance company for someone who is catastrophically injured versus someone who is not is very great, so I see this as an adversarial problem.

Mr Crozier: I am getting the opinion, after hearing a number of presenters who have raised this very point, that it should be better defined. But I still get the gut feeling that no matter how well defined it is, your point may be continued, that once they get into that adversarial position, we've still got a company that's trying to prove one thing, through a multitude of tests in this particular case. I guess I'm just putting my frustration on the record, that no matter how many times a person is tested, there's no end to the number of medical practitioners they can be sent to, who may continue to give the same opinion. We somehow have to get insurance companies to appoint where they will at least finally agree to something. I guess I'm just putting my frustration on the record for your comment.

Dr Henderson: I think your frustration is well placed, and the problem we're dealing with, that we touched on a bit, is that it isn't easy to establish loss. There's physical loss and disability associated with that, and because it's dependent upon the individual and who that person was prior to the accident, the losses become debatable.

I think there have been refinements. The designated assessment centres, the fact that those tend to be multidisciplinary, that health care providers are making the determinations as to what the losses are, are improvements in what is by nature an adversarial system. The thing is that the right people are being put in the position to be providing information so that informed decisions can be made.

In this proposed legislation there are refinements, but I think we're talking about an evolution. It's always going to be a difficult problem, because we're not dealing with things that are easily identified in terms of losses. It's not like a car fender. It's a person.

Ms Lankin: Thank you very much. I think you hit on a point there in terms of it being a process of evolution and learning. With the establishment of no-fault benefits and the medical rehab treatments, there was much for us

to learn from that, and we understand where there were problems and need to be guidelines. I personally think it's a positive step to be putting in place treatment plans and some of those mechanisms. It's not going to solve all the problems and there need to be greater controls that we develop over time.

But with the DACs, for example, while positive, there are problems there as well. We have already heard testimony about companies that refer only to certain DACs because they're confident they'll more likely get a favourable assessment. Well, something's wrong with that system.

We've heard from multidisciplinary teams of health care providers, particularly in the area of acquired brain injury in trauma settings in hospitals, who see their recommendations not acted on by the insurance company and people continuously referred for multiple assessments, sometimes by people in DACs who are not trained in understanding the complexities of acquired brain injury.

The issue of early intervention in rehabilitation I think is incredibly important, and I'm not convinced that a reintroduction of tort is compatible with early intervention.

There are a lot of issues for us to sort through from the health care side and from the treatment and rehabilitation side, to understand the impact of changes in law and the changes in the adversarial system and what it means for people getting appropriate care.

I have two very short, specific questions, however. In points (1) and (2), you raised the issues in terms of impairment and disability and the Glasgow coma scale. I think I understand what you mean in (1), but it might be a matter of semantics. We've heard from many other groups, "Don't consider only the disability, consider the functional impairment," which is the flip side of what you're saying but I think is the same thing. You're saying don't just look at the old insurance industry meat chart approach to things, but understand the functional impairment the person lives with as a result of the accident; that that has to be considered in the treatment plan, the rehabilitation, and the level of benefit. You can clarify that for me.

Second, on the Glasgow coma scale you suggest that there need to be alternative criteria and mechanisms. Do you have specific suggestions? We've heard other groups suggest that the Glasgow outcome scale is what should be used. Is there anything else out there? Is there a need for more work in this area? Would that be a good place to start, at least, in terms of improving on the criteria in the legislation now in the definition provided in order to meet the "catastrophic" threshold?

Mr Follows: Maybe I can address the first question on disability and functional impairment by giving an example. I'm a physiotherapist by profession and my employment is as a hospital administrator. If I lose the complete use of my right arm, this is not a catastrophic injury for me. I will return to either profession, albeit in a modified fashion. I believe that's a catastrophic injury for a construction worker, who may not have the same opportunities for retraining, the same abilities, and may never return to gainful employment. That's a case where

the impairment is the same but the disability is really very different, and I think you have to address both.

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Dr Catherine Gow: Dr Catherine Gow, the rehab centre. I'd like to address your question about the Glasgow coma scale. I'm not sure if you've already heard this information from other presenters, so I apologize and please do interrupt me if this is old knowledge. The Glasgow coma scale indexes level of consciousness, and that is an index of brain stem function and white matter damage throughout the neural axis. If you were to look at comparable levels of damage within the cortex and the subcortical regions of the brain, you would find the Glasgow coma scale does not relate to those areas at all. For example, predominant areas of injury within the brain incurred in a motor vehicle accident are the frontal cortex and the temporal lobes, and neither of these will significantly impact on the Glasgow coma scale. I would agree with previous presenters who have raised that point.

The Glasgow outcome scale is a better way of indexing the relative impairment that is a result of the brain injury, but you can't ignore some of the assessment information that will be available, say, eight months to one year down the road.

Part of the difficulty in using things like neuropsychological evaluations, I think you've already heard from other speakers, is that because it is somewhat an interpretive science there will be different interpretations, but not to utilize this information in any way whatsoever is to throw the baby out with the bathwater. I think we have to find a better way of utilizing our objective evaluations in order to help both insurers and health care professionals deliver appropriate and timely treatments.

Mr Ford: Welcome, Dr Gow and gentlemen. Dr Gow, do you believe treatment protocols can be developed and implemented as a measure to control medical and rehabilitation costs?

Dr Gow: Yes, I do. I think it's very possible.

Mr Ford: How long would it take to develop and implement these protocols?

Dr Gow: Not with regard to a specific patient but generally speaking?

Mr Ford: Generally speaking, yes.

Dr Gow: I think that's doable in a relatively short period, given the research that's available.

Mr Ford: What do you consider a short period of time?

Dr Gow: Somewhere in the neighbourhood of six months.

Mr Joseph Spina (Brampton North): Thank you for a great presentation. In recommendation (3), you indicate that psychological services should be a benefit available without preapproval from the insurer during the first six weeks post-injury. One of the elements we have been facing in the various presentations is the responsibility for intervention, is I guess the way I would phrase it. The insurers, of course, feel they ought to have the responsibility to determine when intervention takes place. Others feel it is the physician first consulted or referred to, and others feel that after X amount of time, a DAC ought to come in and take over, shall we say. I wondered what your thought was with respect to your recommendation.

Should that be a matter of course, that all victims get a post-injury examination where there appears to be head damage, and where should the responsibility lie?

Dr Henderson: No. In putting together that recommendation, my intent was to ensure that people who had the need to see a psychologist or to have psychological services would have the opportunity. I feel it's important, but it's not going to be routine. When I put down the idea about critical incident debriefing, what I was referring to there—it's well understood now that people who undergo some sort of trauma may benefit from a debriefing session. If we use the example of a high school situation where there's been some sort of fatality, a motor vehicle accident or something like that where fellow students have been lost, a critical incident debriefing team goes in. They don't necessarily meet with everybody but—well, they meet with everybody and they help people work through what has happened, get an understanding of the event. That's seen as an effective means of preventing distress down the road. All I was suggesting is that the psychologist should have—there should be an opportunity for that sort of consultation, but it wouldn't be routine.

The Vice-Chair (Mr Tim Hudak): On behalf of the standing committee, I thank the Royal Ottawa Health Care Group for your time today. Have a good day.

COUNTY OF CARLETON LAW ASSOCIATION

The Vice-Chair: The next deputation is the County of Carleton Law Association, Mr Tom Conway. Welcome.

Mr Tom Conway: Thank you very much. It's nice to be here. My name is Tom Conway and I'm a trustee with the County of Carleton Law Association. On behalf of the more than 1,200 lawyers and judges of this region who form the membership of the CCLA, I'd like to thank the committee for giving our association the opportunity to address you on our concerns with the draft bill.

The County of Carleton Law Association was founded in 1888. Through its various activities, the CCLA strives to improve the administration of justice in the Ottawa-Carleton region and thereby promote the interests of the citizens of this region. The association conducts continuing legal education programs for its members, maintains one of the best law libraries in eastern Ontario, and addresses the government of the day on issues vital to its membership and the Ottawa-Carleton community as a whole. Without question, the vexing and apparently perennial issue of automobile insurance reform is just one of these vital issues.

In preparing the association's submission today, I had occasion to review the submissions we made to the previous governments when the OMPP and Bill 164 were proposed and subsequently passed, and on each of these occasions I detected that a common thread emerged from our submission, which went, in my view, largely ignored. When all was said and done, our association urged the Ontario automobile insurance scheme to embody three elements: fairness, simplicity and efficiency. Surely no one who is the least bit interested in this issue will deny that these are desirable attributes in any automobile insurance scheme.

Clearly, it was the failure of the two previous schemes to incorporate these elements that has motivated the government to bring forward yet another attempt at reforming the tort system. The CCLA certainly applauds the effort to correct the deficiencies and inequities of the two previous systems, but at the same time, we caution that the citizens of this province can ill afford to have a third attempt fail. The mere fact that Ontario will have had four different schemes to contend with in approximately five years demonstrates that we have failed to achieve fairness, simplicity and efficiency in our automobile insurance regime.

When the proposed changes were first announced, I read an item in the *Ottawa Citizen* which quoted a senior executive of Zurich Canada. She complained that the new changes were going to "be great for lawyers." When I read this, I thought, without any shame at all, "This means the changes must be good for consumers as well," and now that I have read the draft bill and discussed it with my colleagues in the association, I can say on behalf of our association that the draft legislation is a good starting point. If certain changes are made, it will be better for innocent victims of accidents and for consumers generally than either of the two previous schemes. However, I don't wish you to be under any misimpression. The CCLA is still of the view that the tort system, with all its bumps and all its warts, is still the best system to deliver fair, simple and efficient compensation to innocent victims of motor vehicle accidents.

As to whether the changes will be great for lawyers, let me be clear on one point, and I don't wish to be viewed as making an *ad hominem* attack on insurance companies. However, the fact of the matter is that the Ontario insurance industry is comprised of private corporations; their sole purpose in life is to maximize profits for their shareholders. I'm not saying that is a bad thing. A reasonable profit, born out of healthy competition, is certainly a key component to a viable automobile insurance scheme. But do not let the spokesmen for the industry delude you as to the industry's motivation: profit. Profit is the *raison d'être* of any insurance company. Whatever scheme maximizes profit is a scheme that the insurance industry will fight for.

On the other hand, the CCLA acknowledges that the legal profession also has a vested interest in the automobile insurance scheme, and for those cynics in the insurance industry, I will acknowledge for the sake of argument that the profession is motivated purely by self-interest. While from my personal experience as a lawyer working in this area for quite some time I say this notion is simply not true, one has to go further and ask, what is the vested interest of the profession? It has a vested interest in advancing and championing the cause of motor vehicle victims. By advocating fearlessly on their behalf, we hope to obtain reasonable and fair compensation for injuries, and in the process we hope to make a reasonable profit as well. For these two reasons, I suggest that the legal profession is a far better exponent of the best interests of the consumer of the scheme than the insurance industry is.

Ironically, despite suggestions advanced to the contrary, lawyers do not profit more by flogging cases to

trial and beyond. A lawyer, in my experience, obtains a better fee when she or he has negotiated a reasonable settlement well in advance of trial. Prior to the OMPP, something like nine out of 10 motor vehicle accident cases were settled by agreement with the insurer prior to trial. There is certainly no monetary incentive to lawyers to prolong claims, and there is certainly no advantage to accident victims to prolong a bad and sometimes very tragic memory and to relive that memory in the adversarial environment of a trial. All plaintiffs' lawyers recognize that.

This observation leads me to a comparison of a typical case under the tort system and a typical case under the two previous systems we are now labouring with. Over five years have passed and we now have more than ample case experiences to make a comparison.

A seriously injured accident victim under the tort system typically would go and see a lawyer. The lawyer would be retained, usually without any requirement of a cash retainer. No-fault benefits, although limited, would be quickly and efficiently handled, often without the intervention of the lawyer at all and typically without any proceedings at all being commenced in the courts. The accident victim would be treated by the health professionals without interference or hindrance. Many cases were settled between the plaintiff's lawyer and the adjuster. Cases that went further required one additional lawyer to act for the defence. Most of these cases, as I've said, were settled well prior to trial. The settlement was final; it was a fait accompli. There was no more compensation from the no-fault insurer and there was no more compensation for the insurer of the tortfeasor. There was closure on the issue. Everyone got on with their lives, and the victim went on to bigger and better things.

The principles of law that applied and the calculation of compensation under the tort system were, relatively speaking, simple, and relatively speaking, the system was fair, it was simple and it was much more efficient than the systems we've experienced for the last five years.

In the experience of our members, the OMPP and Bill 164 have been veritable nightmares of complexity. These "cures" to the tort system have proven worse than the symptoms they were intended to correct. In a typical case under these systems, an injured victim now retains a lawyer. The risks involved in proceeding with a lawsuit are such that many members of the profession cannot afford to assume the risk associated with taking on a case that may be a loser. If the case is serious, there is now often a big dispute with the no-fault insurer, as there is with the tortfeasor's insurer. Whereas there used to be two lawyers, there are now, at a minimum, three lawyers, one for the plaintiff, one for the tortfeasor and one for the no-fault insurer. Then come the case managers, the rehabilitation workers, the accountants, the actuaries to calculate the level and extent of benefits. Then comes the Ontario Insurance Commission to mediate and then arbitrate no-fault benefits. Then comes the court to litigate the threshold issue, the issue of liability and the issue of damages.

I think these examples illustrate easily how these schemes are full of inherent complexities, mine fields, uncertainties and enormous potential for disagreement and

discord. So when Zurich Canada, in its submission of February 21, 1996, states that in 1987, prior to the two previous systems, legal costs in Ontario amounted to \$700 million, it begs the obvious question, what have been the transactional costs under OMPP and Bill 164? When I say "transactional costs," I mean what have been the legal costs? What have been the costs of rehabilitation workers? What have been the additional costs of insurers, the additional costs of accountants, the additional costs of actuaries? This information is missing from the Zurich Canada submission, and one has to ask why it is missing. It may be missing because the true transactional costs under OMPP and Bill 164 far exceed those under the old tort system.

Therefore, it is with some relief that our association welcomes the changes that would bring tighter controls to no-fault benefits. These controls should promote efficiency and will ultimately be good for the consumer. But there remain, in our view, cumbersome procedures under the no-fault provisions which permit waste, mismanagement and sometimes fraud. The no-fault scheme remains unnecessarily and overly complex. We would endorse the following changes to the no-fault system: reform of the Ontario Insurance Commission, and an end to the use of designated assessment centres.

Under the tort system, innocent accident victims do not commonly become embroiled in legal disputes with their no-fault insurers. What was intended to be a streamlined process has become bureaucratized, cumbersome, expensive and slow. Comparisons with the Workers' Compensation Board will soon become apposite, in my view.

The no-fault schedule presently pays benefits where no real economic loss has occurred. These benefits are paid, whether there is fault or not, to individuals who are not employed at the time of the accident, and under the present scheme, unemployment insurance benefits appear not to be deductible in the schedule, permitting in effect a double recovery.

We would suggest that the notice provisions proposed under section 258.3 do not promote efficiency, fairness or simplicity. In our experience, an accident victim and his or her counsel have no idea, within 120 days of an accident, whether the injuries sustained are sufficiently serious to warrant the commencement of a formal action. The provision simply encourages victims to give notice to avoid the loss of prejudgment interest entitlement. Once notice is given, it appears that a time-consuming, expensive and perhaps ultimately pointless process is commenced.

The experience of our members suggests that most physicians and health care professionals will not be able, or will not want, to provide a final or even an interim pronouncement on recovery or prognosis within 120 days. Moreover, there appears to be no limit to the number of examinations that can be conducted by the insurer prior to the commencement of an action. This provision may be too easily abused, and consequently is not, in our view, fair, simple or efficient.

On the other hand, we welcome the proposal of mediation of claims but the draft legislation does not appear to address the issue of who is to pay for the cost

of mediation. If accident victims must bear the cost of mediation, this provision is unfair, because generally speaking, an accident victim is not in a good position to afford the cost of mediation.

Our association, however, does endorse fully the imposition of a duty on the insurer to settle claims as expeditiously as possible. But cost sanctions at the end of the day are hardly, in our view, proper incentive on some insurers to discharge this duty in good faith. We would endorse a provision that would permit the court to specifically award punitive or other damages against an insurer that was found to have acted in bad faith and in breach of this duty.

The right to sue for economic loss has been restored, and we think that is a positive starting point. However, from the standpoint of the accident victim, limiting recovery of economic loss to 85% of net income is both arbitrary and unfair. Replacing the right with enhanced no-fault benefits as a substitute has proven to be neither simple nor efficient. The CCLA believes that the restoration of the right to sue, limited as it is to 85% of net income, is a move in the right direction, but again it is going to result in an extremely complex calculation, particularly as it relates to future income and the underlying assumptions that are going to have to be made concerning taxation rates. We would recommend that if there has to be a deductible, it remain at \$10,000.

Much of what I have said on behalf of our association has already been expressed by our colleagues in the CBAO. Our association endorses the content of their submissions, and I won't waste any more of your time repeating those submissions. If I can leave you with one point, though, it's this: Please consider very carefully the constructive comments our colleagues have made. Remove the complexity. Make it simple and make it fair. And don't underestimate the ability of our tort-based system of justice to change with the times and to respond to the economic exigencies of today. That has been the beauty of our common law system: It has adapted and changed frequently over the centuries and it served us well until 1990. It still offers a flexible, adaptable, simple, efficient process for the quick disposal of motor vehicle accident claims. Thank you.

The Vice-Chair: On behalf of the standing committee, thank you very much, Mr Conway, for your interesting presentation today. Have a good afternoon.

Seeing no more business before the committee, we will recess until 1:20 pm.

The committee recessed from 1215 to 1330.

OTTAWA ACADEMY OF PSYCHOLOGY

The Chair: We have with us this afternoon the Ottawa Academy of Psychology, Dr Reesor. Welcome.

Dr Ken Reesor: Mr Chairman, members of the committee, the Ottawa Academy of Psychology is a fraternal organization representing psychologists in the Ottawa area. We operate a community information and referral service and promote educational opportunities and access to rehabilitation and health services.

By way of introduction, I'm Dr Ken Reesor, a past-president of the academy. I'm also a registered psychol-

ogist and a clinical assistant professor at the University of Ottawa. Over the past 15 years I've been involved in assessing and treating people who've been in industrial and motor vehicle accidents. I've had extensive involvement in consultation to third parties involved in the management of accident claims, and for the past two years, like many of my psychologic colleagues, have worked in the designated assessment centres, or DACs, in the Ottawa area.

We welcome the opportunity to present issues and input from our perspective regarding accessibility to health and rehab services in the proposed draft legislation. On behalf of the academy, I'd sure like to thank the Ministry of Finance, its staff and the standing committee for this opportunity in this public forum. We certainly appreciate that in this process there's a variety of stakeholders and that this draft legislation has attempted to provide a balance between multiple competing agendas, including achieving insurance rate stability, access to health and rehabilitation services and the right to sue.

Psychologists are one of the six professional groups licensed to diagnose under the Regulated Health Professions Act. As such, we play a central role in the diagnosis of injury subsequent to motor vehicle accidents. We're a core professional group in the current and proposed DAC system and consult to many of the stakeholders involved, including insured persons, accident benefit adjusters, health and rehab personnel, clinics and lawyers. Psychologists are directly involved in the rehabilitation of people and their families who have been affected by motor vehicle accidents, either directly or indirectly.

Now, we share many of the issues and concerns that have already been presented to this committee by the Regulated Health Professionals Coalition on Auto Insurance and by the Ontario Psychological Association.

There's a fundamental necessity for insured persons to have access to the health and rehabilitation services that are entrenched in this draft legislation. Many of the problems that result from motor vehicle accidents are not effectively addressed in public health care services, such as OHIP, and we commend the draft legislation for implicitly recognizing this.

Some accident victims may have brain injury, compromising their ability to think, remember and make decisions. Some may have been witness to violent sudden death, sometimes people they are very close to—a family member, a child, a parent, a friend. Some may be severely emotionally traumatized by their accident to the point they can't function normally; they can't drive a car, they can't engage in care giving, they can't work and so on. Some people are faced with the trauma of amputation. Some are faced with scars or disfigurement. Some people are faced with persistent and intractable pain, loss of enjoyment of family, work and recreational life. Some people will not be able to return to work. Some need assistance in retraining and help in seeking and acquiring alternative employment. These are fairly serious problems that can arise subsequent to motor vehicle accidents.

In the development of this draft legislation, we understand that there was a clear aim to propose reforms

whereby treatment and rehab benefits could be closely tied to the severity of the injury and impairment and to find ways to limit excessive treatment provisions and ensure mechanisms whereby a treatment's appropriateness, reasonableness and effectiveness will be monitored.

One of our roles as diagnosticians, as with the other regulated health professions in this system, is to determine the nature and degree of impairment. People can have some very serious mental, physical and emotional problems following an accident. There are also individuals who, for a variety of reasons, put an unnecessary and excessive burden on the system. Our contribution to ensuring appropriate service provision is to identify those individuals for whom treatment is appropriate, necessary and reasonable, and those for whom it is not. The assessment process contained within the draft legislation allows for effective management and use of health and rehabilitation services and, at the same time, ensures cost containment.

We feel that the draft legislation had to entrench access to health and rehab services for the public good and had to include dispute resolution mechanism options, including the DACs. The assumption that a tort model or a system where the decision of the insurer alone will allow for appropriate and timely access to and cost containment of health and rehabilitation services is untenable, unworkable, too costly and too time-consuming.

The academy supports the draft legislation's definition of impairment, which means a loss or abnormality of a psychological, physiological or anatomical structure or function.

While recognizing the various impairments that may arise following a motor vehicle accident, we feel there is some discrimination against those injuries that are psychological rather than physical for access to urgent care within the first six weeks post-accident. Psychological trauma is not as obvious as physical trauma but is just as costly if it's not managed properly. Not having access to urgent care for psychological injuries does not make clinical or economic sense. Certainly clinical studies show that the impact of an extreme psychologic traumatization is significantly reduced with immediate and timely intervention. This can translate into earlier recovery, earlier return to work and fewer treatment and intervention requirements later on. These clinical and economic principles have been explicitly recognized in policies of the airline and the banking industries, for example, which provide psychologic care to employees and their families immediately following events such as plane crashes, hostage takings, robberies and other traumatizing events. Clearly, it would be inappropriate for traumatized victims, their families and children to wait months before they get this type of care.

The draft legislation has provided a variety of cost containment controls that, used appropriately, will contribute to insurance rate stability. It should be noted that under Bill 164 there were a variety of cost containment/cost control mechanisms that were underutilized by many insurers. There is a lot of variability in the insurance industry as to how it has applied cost containment and cost control options to health and rehabilitation

services, with some effectively containing health and rehab costs and some not. The proposed draft legislation has even more cost controls, notably the requirement to provide a treatment plan to the insurer, a smaller cap on the total health-rehab costs and a revamped DAC process.

Members of our academy support greater cost control and containment via an effective professional review and monitoring system in the cases of dispute, as in the draft legislation's proposed pre-authorized treatment plan. We do view that this mechanism allows for efficient and effective service provision to the motor travelling public.

Also, pre-authorization ensures a certain amount of standardization for specific types of intervention for specific disorders and problems that arise from such accidents. This is important for ensuring quality of care and for contributing to insurance rate stability.

It should be pointed out that the insurance industry and the general public have assurances of quality control through the guidelines and procedures under the Regulated Health Professions Act. This ensures that not only the public but the insurance industry has a way of dealing with health professionals whose work does not meet professional quality standards.

The cap of \$75,000 for total health and rehab costs has been proposed to contain such expenses for the vast majority of accident victims. There will be a small percentage of complex cases that will require health and rehab expenses beyond this cap. Alternative mechanisms such as the right to sue for additional damages are ineffective methods for ensuring necessary services in a timely and appropriate fashion. Therefore, consideration of an intermediate category between catastrophic and non-catastrophic impairment, as was proposed in the so-called ALPHA proposal, may be one possible way to address this issue.

Just in conclusion and in summary, it is our position that the government's proposal is a fair and balanced one, achieving a variety of objectives, specifically with the provision of health and rehab services and contributing to insurance rate stabilization.

The draft legislation appears to provide the basic services, while not offsetting those costs into the public purse, into OHIP or other social assistance support systems.

The proposed legislation also ensures control over excessive treatment and treatment costs by a variety of mechanisms, including the treatment plans and professional review in cases of dispute.

The draft legislation had to entrench these services because the alternatives would not guarantee appropriate access to and cost containment of health and rehab services.

We feel that the legislation needs to allow for timely access and urgent care for psychological injury in addition to other services that might be available. The cap for non-catastrophic injury may not be sufficient for a small percentage of accident victims with complex or multiple injuries, and a mechanism for determining entitlement at an intermediate level between catastrophic and non-catastrophic impairment should be considered.

Thank you. I'll entertain your questions in the remaining time.

1340

Ms Lankin: You touch on a number of important issues. I want to focus my questions on the area of psychological treatment. I understand the basic principle of early intervention in any kind of treatment and/or rehabilitation. I'm wondering if you could elaborate on what the consequences would be if there wasn't a provision for early intervention and treatment for psychological trauma. In addition to that, however, could you tell us a little bit about how attending physicians in an emergency department and/or anyone else determine that this was required. Thirdly, could you comment on what I think might be the industry's response that this is an area that is open to significant abuse? We have seen the employer community, for example, respond under workers' compensation to issues of workplace stress, and there is some body of opinion from those groups that this is an area open to abuse or it just doesn't exit. I don't agree with that but I'm wondering if you could share your experience with us and help us understand this issue a bit better.

Dr Reesor: First of all, the consequences. Not specifically within the motor vehicle area but within industrial accidents there's a fair bit of research—and in other industries, as I mentioned, the airline industry in particular, the banking industry—that not treating traumatization early can lead to other emotional problems, conditions that we see down the road. There's a greater incidence of something called post-traumatic stress disorder; there's a greater incidence of depressive conditions; there's a greater incidence of work absenteeism; there's a greater incidence of people going on long-term disability. What some of these studies have shown following specific industrial accidents in some of these other types of disasters is that the incidence and those costs are reduced with intervention that is very timely, within days. So there's some fairly real cost saving with that early intervention.

You raised a problem that is probably going to be the biggest obstacle in delivering this, and that's early recognition. We find this a lot in the motor vehicle arena because often people are hospitalized. The key thing is medical stabilization right away. Sometimes we don't see traumatization until people are discharged; we don't see those emotional effects. But there are a few clear examples where we can be pretty reasonably sure that there's some degree of traumatization when there has been a witness to a violent death, immediate loss, if there are other circumstances of the accident where there was a clear threat to a person's wellbeing. Some of this should be picked up pretty quickly by emergency personnel or the treating physicians to render, to get people into those services right away.

If I could just comment on the WCB system, because I did make a presentation a number of years ago regarding workplace stress, which is a very messy area, I think we're talking about a slightly different kind of thing. A motor vehicle accident is a very specific event. It can be a very traumatic event. One of the things that muddled the water in workplace stress was that there wasn't any defining event; it was very hard to define what caused the

stress. I think we're dealing with a very different kind of thing here.

Ms Lankin: The allegations are the same about the potential for abuse and about the lack of understanding. I understand the difference between an occupational disease and a workplace accident, which is that argument, but—

Dr Reesor: I think one of the mechanisms, and to come back to a point I made earlier, is that the DAC system should pick up treatments that are excessive or prolonged to treat so-called traumatization or some other psychologic injury that occurred after accidents. That DAC process, certainly here in Ottawa, has been very slow to get off the ground, very slow to be effectively utilized, and I think you would find that if there isn't a demonstrable response fairly early on in that treatment, there are going to be very few DACs that are going to say or authorize that further medical rehab for that injury is necessary if there isn't demonstration of some functional gain. So I think that's a good mechanism for controlling that.

Mr Spina: Thank you, Dr Reesor. It's good to see an academic who has some good hands-on field experience as well. I just want to pick up on what Ms Lankin was just talking about and you were addressing with respect to the DACs, that is, the criticism the DACs have had in terms of their effectiveness. Can the DACs kick in sooner? Would that help the system?

Dr Reesor: Definitely. I think that's been one of the problems and one of the big reasons perhaps that Bill 164 has been perceived as being fraught with problems. In my own opinion, in seeing a number of motor vehicle accident cases, probably about 400 or 500 since 1991, and especially seeing what's happened since Bill 164 came on, I've been amazed at how many people didn't get DACs sooner. Clearly the decision, in my opinion, in the DAC would have been that further treatment isn't necessary or required. It is a mechanism that can control and contain that. I've seen cases where tens of thousands of dollars just in psychologic treatment alone have been spent when that should have been DACed months, even years earlier.

Mr Spina: Which can lead into the other factor, and I guess it's who has that key responsibility in determining what treatment the victim gets, when it kicks in; and what has also impacted on that process—I'd be interested in your opinion on really the conflict-of-interest issue, the referral-for-profit kind of issue that has surfaced through these hearings.

Dr Reesor: I'm concerned about the conflict-of-interest issue. I think it can arise in a number of different settings. One of the advantages about the DAC system is the clear separation, the clear delineation away from any potential conflict-of-interest types of situations arising.

It's probably been said before, but there are a lot of tools that certainly the insurance industry has at its disposal to be able to track, to be able to monitor what are appropriate and inappropriate treatments. They can certainly use the resources of those regulated health professions that have a fair bit of data information on this.

I think maybe one of the problems, looking at it from my perspective, is that under Bill 164 and maybe even

under OMPP there were some dramatic changes to the rehab and health end of things. It really has not been a very long time for people to adapt and get used to this, and here we're facing another set of quick changes. I think, though, that there has been an evolution, if you like, of cost containing, being more reasonable about treatment, and that can continue to evolve.

The problem that you mention, the for-profit, certainly that can be a disincentive in some situations. Again, however, I think what the proposed legislation is doing is putting a bit more teeth to the conflict-of-interest guidelines. You do have the resources of the regulated health professions which don't look very kindly on that kind of thing. I know our own college has at least four separate committees looking at how we behave and how we practise. That has far more teeth than anything set up in the draft legislation to govern our behaviour accordingly. Again, it's a mechanism that can be used and has not been used. It probably has been underutilized.

Ms Castrilli: Thank you very much, Dr Reesor. It's especially a pleasure to have someone from the DACs here. We've heard a lot of information about the DACs. I'm curious about your comment about mechanisms to contain costs under Bill 164 and that they were underutilized. I think it's quite true. If you look at the charts in terms of the costs—I'm not sure which specific measures you're talking to, but in terms of the actual costs per vehicle—they are twice as high as they were under OMPP, so I think you're quite right.

Let me ask you a question specifically about the DACs. We've had a large number of victims who have come before us and said: "The DACs are a problem. They are a problem because they're really not independent, they're really not unbiased and frankly they're a hindrance to my progress. I can't seem to get through, and on top of it all, that's what's causing some of the costs to escalate"—not alone, but some. I wonder how you respond to that. I want to give you an opportunity to make the case, because an awful lot of people do not believe that the DACs are helpful to them.

Dr Reesor: A couple of things. In the legislation, in Bill 164, you have a criterion that people have to evidence a substantial impairment in a number of areas of activities of daily living. It's a pretty stringent criterion. I see a lot of people in the DACs and there's no question that they have ongoing problems, and that's a concern. Many of the people I might see for example in a disability DAC, which is separate from the treatment end DAC—there's a medical rehab DAC and a disability DAC—I feel really do require ongoing treatment services. However, they don't meet the criteria to enable them to continue to have income benefits. Often what we're getting in DACs is cases that are contentious. They're going to the DACs because there's a certain amount of dispute there.

There has been, in my opinion, some unevenness in applying standards of DACs which I think is starting to get addressed. Certainly within our profession, if you look at the upcoming Ontario Psychological Association convention, there's an incredible amount of presentations on looking at the assessment of disability and standards and uniformity. Again, I think it's been fairly new in

applying some of these standards, but it is a stringent standard for disability entitlement.

The other thing, if you look at treatments, and again I think some of the DACs have been fair in applying what we can judge based on good clinical evidence—an example of this is, as many of you may be aware, the Quebec study on whiplash-associated disorders—it comes down pretty hard line that, “Look, we just don’t have evidence that continuing treatment ad nauseam or past a certain point is going to produce any functional gains—either return to work or a change in symptom status—or somehow change people’s function to any significant degree.”

I sympathize on one hand, because I see a lot of people with ongoing, continuing problems that can be addressed by perhaps quicker and more efficient interventions. I can’t say that the problem is with the DACs. Sometimes the problem is just with the nature of the injury itself.

For example, I was looking at a study on people who lost children. These are adults who lost adult children in an accident and they were followed up some eight to 10 years later. Many of them had many symptoms of significant grief and loss and other emotional difficulties and were still encountering problems because of that loss. These conditions do linger. I think the problem is that somewhere we draw a line between how much we can really do within the health rehab context and when is the point that people have met their maximal medical or maximal psychologic recovery. It’s frustrating and I think it’s psychologically very difficult for many people to accept that they’ve got to that limit.

Ms Castrilli: We had one woman yesterday who had four opinions from four different doctors who concurred and the DAC did not. I think in those cases you see the anomalies very clearly.

The Chair: Thank you, Dr Reesor, for your input and your presentation today. We appreciate your being here.
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ARIEL DELOUYA

The Chair: We now welcome Mr Delouya.

Mr Ariel Delouya: Good afternoon, ladies and gentlemen. I’m here really in the capacity of an average citizen with concerns about the auto insurance system in Ontario, particularly as it regards the question of so-called higher-risk drivers and Facility Association.

By way of background, I’m a 33-year-old bureaucrat employed with the federal government in the Department of Foreign Affairs and International Trade. I have been a licensed driver since 1980 and until recently enjoyed a six-star highest auto insurance rating with low interest rates to go with that.

Unfortunately, in 1993, 1994 and 1995, in the span of about nine months, I had the misfortune of having two minor accidents: one in inclement weather conditions at night, single vehicle, my car alone; another a minor fender-bender last August. As a result of those two minor accidents—and I should point out that this is in the backdrop of a violation-free record, an accident-free record, having driven abroad in many different environments as a result of the work I do—my insurance rates

went from about \$670 a year to \$3,200 and change a year. That’s a considerable hardship.

I’m fortunate to a certain extent in that as hard as that may be, I can bear that hardship. I’m sure there are a number of people who, when finding themselves in that situation, probably can’t make that payment and probably have to either forego the use of their car or, unfortunately, as is the reality, many will drive uninsured, posing an even higher danger to other motorists.

In my case, I’ve had to deal with what seems to me the unfairness of that situation, but I’d like to point out a number of flaws that strike me with the Facility Association system, and it is my hope that this committee and the work it has before it will find some way to address this concern.

I do recognize, I should point out, that there are incidences of drivers who do drive recklessly, have chronic poor-driving records that certainly warrant higher premiums. My bone of criticism is with a system that seems blunt and unable to differentiate between a chronic poor-record driver and someone in my situation who has had the misfortune of having two minor infractions, or in this case accidents, in a short period of time.

I should point out that as a result of the timing of the accidents that I’ve had, I now face this situation of very high payments for the next four years. If you do the math, that’s roughly \$12,000 to \$14,000, presuming that there are no further increases built into the system in the next three or four years.

What I’d like to point out is that I’m at odds with a system, as I said, that doesn’t seem to draw a distinction but, more importantly, that seems punitive and harsh. Let me give you a couple of specific illustrations.

When I looked at the new sheet outlining my payments and breakdown according to the different benefits covering my policy, there was a \$200 policy fee which intrigued me. It didn’t seem to fit anything particular. I inquired with my broker as to what this policy fee was related to, and was told: “Oh, that’s just a standard fee that’s charged on any Facility insurance claim. It’s an administrative fee. It’s either 10% of the policy or \$200, whichever is less.” That to me seems like kicking someone when they’re down. It seems very unfair. I can’t figure out and neither can my broker give me a proper answer as to why that kind of a punitive fee on top of an already exorbitant policy premium is charged.

I have an eight-year-old car. What I’d like to point out in the next segment of my presentation is something that I think will interest all of you who are interested in promoting growth and promoting jobs and economic activity. I was thinking very seriously about replacing this car, perhaps with a new car, in the next couple of years. That decision has now basically been taken for me by virtue of the Facility Association system. I will not buy a new car in the next three or four years. Simply put, the money I’m going to be spending likely on insurance in the next three or four years would’ve paid for probably 60% of the cost of the kind of car I would’ve been in the market to buy in the next two or three years.

I guess there’s an issue of public policy here. Do we want people who, in this kind of circumstance I’ve

outlined, paying what certainly seems again to me to be a usurious fee for auto insurance coverage, when there's an inability on the part of the insurer to look at the overall record, and in my case, I would argue an exemplary record, against the backdrop of one year?

I should point out, as an aside, I don't quarrel with the fact that I should pay more for my insurance as a result of those two accidents. What I quarrel with is whether I should be paying five times more. I don't quarrel with paying even twice as much as I was paying. I recognize that I've obviously incurred costs for my insurance provider, and I'm prepared to compensate for that.

There's a difference between paying two or two and a half times what one was paying and paying five or more times than what one was paying. So the new car is out the window. I'll manage with the car I have, but again there is an issue of broader public policy here. Is it in the interest of the economy of Ontario to have people spending the kind of sums that people who find themselves in my predicament will pay for insurance coverage when they could be making what I would call more meaningful and productive investments elsewhere in the economy?

Lastly, and then I'll be more than happy to take questions, I'd like to offer another example of where Facility Association is, in my view, a system out of whack. And this has nothing to do with me.

As someone employed by the Department of Foreign Affairs and who has to be posted occasionally abroad, I can relate at least two instances of colleagues who have told me about situations they have found themselves in that I think are worth noting. I'll cite one.

A colleague recently came back from London, after a four-year posting at the Canadian High Commission in London. He lived in the city centre, decided that public transit in London was certainly adequate to meet his needs, liked to bike, decided he wouldn't buy a car, too costly to maintain, nowhere to park it. For the odd times that he wanted to go for a country drive or visit somewhere, he would rent a car.

He came back to Ontario last summer. He approached an insurance company to provide coverage for a car he had bought to resume his life in Ottawa and was immediately designated a high-risk driver. He was designated so not because he had accidents or previous violations; he had an exemplary record before he left Canada. The reason was quite simple. He had not been insured for the past two years.

He did not realize, incidentally, that Facility Association could be an issue for someone in his position who had forgone the use of a car for two years. As a result, he finds himself with a new car with insurance payments of close to \$4,000, probably for the next two or three years before they start to gradually come down to a more reasonable level.

Those are just a couple of instances that I think illustrate certainly the problems that I see with the auto insurance scheme in the province of Ontario. It's not one I've seen echoed considerably in articles and media reports of what this committee is studying and what the draft legislation proposes, and I would hope that my

intervention and hopefully the intervention of others might help steer the work of this committee in that direction, as well as in the other directions it has pursued.

Mr Tim Hudak (Niagara South): Thank you for your presentation this afternoon. This committee has had quite a bit of input actually, and Facility Association is something that I believe the government will be looking at, but I have some specific questions for you on that issue.

You mentioned two accidents within a nine-month period. I believe that you said you saw your insurance up to five times as high.

Mr Delouya: About five times, from about \$680 to \$3,260 something.

1400

Mr Hudak: What would be your suggestion to this committee as to when a driver would be put into Facility in terms of accidents in a time period or whether it's at-fault, not-at-fault, that sort of thing?

Mr Delouya: Certainly there are offences and there are behavioural attitudes that warrant Facility almost immediately; people who drive while intoxicated, people who violate such elementary rules of the road as not respecting flashing lights on a school bus. There are different gradations certainly of offences. As I said, I don't quarrel with paying more as a result of the claims that I've submitted.

What I don't find reflected in the Facility Association system is an ability to discriminate between, is this a person who has had a run of bad luck, is this a person who has had a couple of minor traffic violations and otherwise has had an unblemished record, or is this a person with a chronic pattern of repeated traffic violations, repeated accidents, repeated arrests for violations of the Highway Traffic Act, that sort of thing.

I also find fault with a system that, to take my case, did not seem able to look at eight or nine years of record of insurance since I have come back from my last posting where there hadn't been claims, where there hadn't been violations, where there hadn't been accidents, where basically there was an unblemished record and where I had a six-star rating and was paying the kind of low insurance rates that I was paying and then all of a sudden from one day to the next finding myself thrust into the world of Facility Association. It's that kind of bluntness in the system that I find objectionable.

Again, I'm not saying that drivers who find themselves in my predicament or in other predicaments should be absolved of their responsibility. I take responsibility for those accidents. They were clearly my fault. One was a single vehicle and one was not. I don't for a second dispute the need for that to be reflected in my premiums, but there is a question of degree that should enter the picture.

Mr Phillips: I think we all appreciate you being here. It's a story that is not unlike what we've heard elsewhere and I think Mr Sampson, looking at the problem, is trying to find a solution, I suspect. Is that fair to say?

Mr Sampson: Right. We are certainly not trying to create another problem.

Mr Phillips: Deliberately.

I guess the best we can say is, I think you've been a very good witness to give us again the unfairness of the

situation where essentially you've had the bad luck really in some respects and then you're thrown into the mix with those who are there for good reason. I would hope the government may find some way to find some flexibility in the system to do what I think your fundamental recommendation is, that you appreciate there is a need for dealing with high-risk drivers, but there should be gradations of risk.

Mr Delouya: Certainly. Could I just add one thing, Mr Chairman? I don't want it to seem like I'm here strictly concerned about my own plight. As I said, I can cope with that, but as I said to you earlier, I'd like it to be reflected, if I can have it so, that there's an issue that goes beyond my situation or the situation of a habitual poor driver. It's the illustration I gave with respect to people who work in my department who come back from postings, and I'm not here speaking on their behalf; I'm here strictly in my personal capacity.

But again I think it's a good illustration of where there is a rough edge to this system when people who have driven 20, 15, 40 years, 30 years coming back from a posting to a place where they haven't had an opportunity to drive or haven't deemed it appropriate to drive because sometimes you just don't want to drive in certain environments find themselves thrust in that same kind of predicament.

Ms Castrilli: One quick comment, Mr Delouya. I think you've illustrated very well here what one of the basic problems is in this whole area and that is that the rules are not transparent. There's not due process. There isn't even an element of fairness and even if there were, it's not perceived to be that way by the public. So there's an issue here of education, as well as some basic fairness issues. Would you agree with that?

Mr Delouya: Very much so. I didn't know anything about the Facility Association. I'm a very well informed person and I'm pretty well in touch with things around me. After my first accident—and that was a single-vehicle accident, so there wasn't another party damaged—had someone told me about the Facility Association, had I been informed by my broker, had I been informed by anybody else in the system that there was this issue, frankly, I would have paid the damage myself, if only not to find myself faced with that probability. Even when I had the second accident, I still didn't know, and it's only after that second accident that I discovered the reality.

I should point out, in fairness, that partly because of horror stories like mine and I'm sure countless others, the press has begun to report somewhat more extensively on it. I know that even within my own department there have been administrative notices sent out to missions abroad to inform returning staff. This is certainly the kind of issue I outlined before about uninsured drivers for the past two years. The educational level seems to be rising, but it's still a very murky area and it's unfortunately too often the case that people find out once they've fallen into the abyss of Facility Association and they can't do anything about it.

Ms Lankin: I'm very glad that you have stressed this with the committee again. The committee members know

this, but I myself experienced a period of four and a half years covered under fleet insurance where I didn't have my own vehicle and therefore didn't have my own insurance.

When I went to become reinsured, in this case I was asked if I could establish five years of accident-free and at that time would then be given a five-star rating for the price that I would get. I could establish four and a half years, because prior to that the company that I'd had my insurance with had gone out of business, and even though their files had been taken over by another insurance company, nobody could track it down: broker, companies, whatever. So even though I hadn't had an accident for 10 years, I had no way of proving that at that point in time and so therefore had to pay the extra costs. It didn't make a lot of sense to me, and this was for a matter of six months in terms of the driving record.

On your issue of the two minor accidents, it distresses me to hear you say that had you known, you would have paid the costs of the first one yourself for the repairs. I understand the point you're making very well, but that's what insurance is for.

I put a question to someone from the insurance industry in terms of, what is a good-risk driver? Because one of the things I want to point out is that while the government says at some point they might deal with the Facility management issue, what they are promising in this bill is that good-risk drivers are going to have lower rates, and the insurance industry official told me there is no definition. Most people would think they're a good-risk driver, but if they've ever had a speeding ticket or any kind of minor infraction, in our view, they're not a good-risk driver. So I think your issue about standards and definitions and education is very important and I appreciate your presentation.

Mr Silipo: Very quickly, I echo the feelings that others have expressed about the usefulness of your presentation in reflecting that of a number of others in raising the problem. Just to further our understanding of some of the issues, I just wondered if you would be able to tell us, if you combine the two accidents or incidents that you were involved in, what cost that would have resulted to the insurance companies in terms of outlay either to other parties or to yourself for the vehicle damage or whatever it might have been.

Mr Delouya: I would say the single vehicle accident was about \$2,000. The second accident, which involved another vehicle, I actually never found out what the other party's damage was. It was less than mine, I think, just from looking at the damage. I would say that was probably \$2,500.

Mr Silipo: And were there personal injury claims as well?

Mr Delouya: No. There was just body damage. They were minor. They were minor, but unfortunately, car repairs being what they are, it doesn't take much.

Mr Silipo: So when you put that together, it sounds like roughly the increase in a year and a half would have covered basically the additional costs between the two accidents.

Mr Delouya: And I'll be dealing with Facility for four more years.

The Chair: Thank you very much, Mr Delouya. We appreciate your presentation at the committee today.

Interjection.

The Chair: You can't do a point of privilege, but you can do a point of order if there's something out of order.

Mr Wayne Wettlaufer (Kitchener): It's not a point of order. It's a matter of clarification for all the members of the committee as well as Mr Delouya.

Insurance brokers traditionally advised their clients when a claim was a small claim that it could adversely affect their insurance acceptability and their insurance rates. That was prior to 1994. Subsequent to Bill 164, there was an agreement by the insurance companies that was negotiated. Insurance brokers, upon being advised of a claim, regardless of size, now must advise the insurance company. The alternative, of course, is being reprimanded by the regulatory body. That's the way it is.

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Mr Kormos: Pursuant to that point, Chair, and that point hasn't been recognized, I've got a pamphlet that's being distributed by a large brokerage in a major city in Ontario that specifically indicates to its clients that that broker will advise you against reporting certain types of claims. Get hold of that broker first because reporting those claims—I've got it here. It's got the name of the broker on it. It's an official document: To Claim or Not to Claim. I quite frankly would expect that of a broker, but at the same time that broker not only is probably breaching the agreement, but is probably pretty close to finding himself or herself a party to criminal activity, perhaps even fraud. The fact is that's why the insurance industry has been referred to as highway robbery in this province for so long. The highwayman is still robbing out there on those roads, and that's why we advocate public auto insurance. That's the only real solution.

The Chair: Thank you very much, Mr Kormos, and thank you, Mr Delouya.

THOMAS CONNOLLY

The Chair: We now welcome Mr Connolly to the committee. We have 20 minutes together.

Mr Thomas Connolly: Thank you very much. My name is Tom Connolly. I'm here, as my paper indicates, as one voice for innocent victims. I'm one of the many lawyers in Ontario who since 1990 have been forced to observe and listen to innocent accident victims react in shock and disbelief when fully informed as to their rights of compensation under the existing motor vehicle accident systems.

What I'd like to do this afternoon, and I'm going to do this very briefly, is indicate to you how and why this draft bill does little or nothing to bring fairness and justice to innocent accident victims. I hope to assist you in understanding, from the perspective of the innocent accident victim, why this bill fails and how you might rectify it.

To fully appreciate the devastating consequences of the application of the existing insurance legislation since 1990, I suggest to you that one has to be a victim, one has to be a member of a family that has a victim, or you have to be intimately involved on a day-to-day basis in trying to bring fair compensation for that innocent victim.

This government promised to overhaul the auto insurance system in Ontario. I believe this was a philosophical belief, perhaps reflective of current public opinion, that we need less government involvement, less regulation in our lives. When I read this bill, I think it does the exact opposite.

I think it's trite to say that all an innocent accident victim asks for is really to be put back in the position they were in before the accident. We use this expression "to be made whole again," and there are a number of parts of this legislation that attempt to do that. But I think it fails on a number of headings and I'd like to deal with those. I'm sure your committee has heard from a number of interested groups and parties who claim to be stakeholders in the present system, and I don't denigrate their rights to be heard and I hope they have been heard, but I suggest to you that your primary concern is really the innocent accident victim who is in that position because of no fault of their own. In the final analysis, you're going to have to make value judgements, you're going to have to weigh the scales, but I ask you not to lose sight of your responsibility to be fair to the innocent accident victim and to make him or her whole again.

I approach this from the point of view of, what is compensation? I look at it from the perspective that money can't fully compensate anyone for an accident. But I believe the tools are already there to get as near perfect a system as can possibly be done. I heard comments this morning that we should look at other jurisdictions to see what they've done, and I think that's probably worthwhile, but a lot of this has already been done in the report by Coulter Osborne. I think if you go back and look at and study that report, you'll get quite an education in terms of what other jurisdictions are doing.

I look at compensation using the terms that are common in personal injury litigation, and these are "pecuniary" and "non-pecuniary" losses. They're nowhere defined in the legislation, they're nowhere defined in the regulations, but they're commonly used terms.

Pecuniary losses are those losses which can be calculated in money, including expected or anticipated future expenses or losses, such as the loss of future care or the loss of future earnings or earning capacity, and future income tax liability, which is nowhere addressed in this legislation. These heads of damages are limited only by the ability of the innocent accident victim to apply them to their own set of circumstances and to argue that they're reasonable when applied to them.

The concept of non-pecuniary losses is conventionally understood to encompass three components. The most common one, and the one I'm sure you've heard about ad nauseam, is damages for pain and suffering. Then there's damages for loss of expectation of life and damages for loss of amenities of life, the enjoyment of life: the ability to walk and run and do things we take for granted. They're essentially one head of damage.

The distinction of these damage components between non-economic or non-pecuniary and pecuniary can result in as near perfect compensation as can be arrived at if, and only if, the barriers to arriving at that are knocked down. That's what I want to address with you today, if I can, for a few moments.

In my view, the present insurance system sets up roadblocks to fair compensation. This draft bill has been advertised, I suggest, on the theory that it gives more access to the courts and knocks down barriers, but in my view it simply knocks the innocent accident victim off the road to fair compensation. It creates this illusion of restoring rights, but it's creating more roadblocks. I think these roadblocks have come about to a large extent because we're attempting in this legislation to find things for all possible victims, not just the innocent accident victim. We're trying to figure out levels of compensation for everyone and we're trying to get definitions.

Perhaps it's the frailty of the English language that you can't define in legislation some of these concepts. I want to just briefly talk about what I term the verbal roadblock. In a nutshell, the existing legislation wipes out any claim for non-economic loss that fails to meet a verbal threshold. There are two words in the verbal threshold that are fraught with interpretation problems, and these are the words "serious" and "important." As you know, this bill doesn't propose to change anything in the verbal threshold. We're still going to be left with these expressions "serious disfigurement" or "serious impairment of an important physical, mental or psychological function."

It's interesting that when I went back and looked at this legislation and I looked at what has been put out by way of draft, I saw that the legislation had in it this regulation-making power, where these abstract concepts in the verbal threshold were going to be defined. Further, there was a section in there saying that the evidence that must be adduced to prove a person has sustained a serious impairment of important physical function etc was going to be defined by regulation. I went back and looked at the old legislation, and exactly the same wording is in the previous bill. That bill received royal assent on July 21, 1993. We've almost come three years since then and there still isn't any regulation passed to define what the meaning is of "serious," what the meaning is of "important."

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So we're repeating those same regulation-making powers. I can understand why no one has defined them, because they're abstract concepts that are almost impossible to define for purposes of doing fairness to the victim. For example, at the back of my paper I've given you a real-life example of someone who finds herself in this problem of trying to define the word "serious." A woman who was left with scarring on her lower legs is denied compensation and is told that by wearing appropriate clothes the scars can be hidden and therefore are not serious; they may be a disfigurement, but they're not serious. Where does that leave that particular innocent victim?

The bill as presently drafted gives the illusion that we're going to have the right to seek compensation for economic loss. The definition sets out that the innocent victim is going to be entitled to seek 85% of his net income loss, as determined by regulation, after the first week, one week after the accident; and of course 100% of these other expenses, what we formerly used to call "special damages," though we're now defining them as

medical care, rehabilitation, attendant care, housekeeping and home maintenance. Of course, the moment you try to define something, you're excluding something else.

When I look at the regulation that's been circulated to define what net income is, I come to the conclusion that the vast majority of innocent victims would have no claim for economic loss that could be pursued in a tort action. It would result in innocent victims permanently giving up 15% of their net lost income. It fails to consider the effect of inflation, the likelihood of wage increases or the promotion of the innocent accident victim in the workplace, and it just arbitrarily robs them of the first week of income.

Then I look at it from the perspective of how it affects the self-employed, the small businessman, the farmer. It defines "self-employment" by looking at profit as subject to taxation, so we'd be back to producing income tax returns. This would be an effective roadblock to any claim for overhead expenses of the self-employed during disability. The farmer who is disabled and cannot milk his cows must hire a replacement worker at his own expense, without compensation, under this draft. Most farmers have little taxable income that they actually report on their tax return, so they will fail to meet the test to receive any net-loss-of-income benefits under this proposal. In effect, a farmer loses both ways.

What about a disabled labourer or contractor? He's under disability, he's precluded by his injuries from building or improving his own home. He can't recover any of these losses. A student whose tuition fees are lost, whose career is lost or delayed, gets nothing.

A further roadblock is established for the innocent victim by failing to consider the loss of future and current earning capacity and whatever competitive advantage they may have had in the workplace.

The draft bill goes on to talk about what I refer to as the monetary roadblock, that is, seeking compensation for non-economic losses. We have the threshold set now at \$10,000. This proposes to increase it to \$15,000. The great thing about a monetary roadblock is that at least it's expressed in absolute dollars; we can all understand it, it doesn't have to be defined. But by increasing it to \$15,000, I suggest you're in effect eliminating all claims for non-economic loss, claims for pain and suffering, to at least \$30,000, because no one is going to pursue those claims when you make it that high.

The net-income-loss concept will result in the need for accountants and economists. This creates another monetary roadblock, because these costs can be \$5,000 to \$10,000 for the innocent victim, and much more if he is forced into a situation of trying to prove an accident at trial. The net-income-loss limit at 85% results in a permanent 15% deprivation—you simply give up 15% of your net income—so that's another monetary roadblock. Then of course the commencement of the claim can't take place till day eight after the accident, so you're giving up that one week's worth of income, for no good reason.

The retention of the verbal threshold for non-economic damages, for pain and suffering, creates for innocent victims a need to get medical evidence. These costs can easily be \$5,000 and act as a further roadblock to justice.

My submission is that these monetary roadblocks, combined with the definition problems, combined with the cost problems, will just eliminate many claims for fair compensation.

I know you've heard something already from other parties about what I call the time roadblocks. The legislation has this new section in the draft bill, section 258, that creates some new time blocks for innocent accident victims, things that aren't there at the moment. We've got the requirement to give seven days' notice to the insurer after the accident. We've arbitrarily in this draft eliminated prejudgement interest on all damage claims if written notice is not given or an action started within 120 days after the accident. This is highly prejudicial to innocent victims. What it is going to require if it's implemented is that any time someone determines that they're going to bring such a claim, they will have to bring a motion to a judge, to a court, to authorize the mere commencement of the action before the statement of claim can be issued at the registrar's office. It's a further cost roadblock.

The verbal and monetary roadblocks will dissuade victims from involving lawyers until they're reasonably satisfied that they can overcome these hurdles. Nevertheless, such victims are going to be penalized for acting in that fashion. Victims now are often advised by adjusters, people in the insurance industry, that lawyers are not really necessary, that it's simply a question of filling in a few forms and you can establish your entitlement and your level of benefits. They're often told that they'd not likely have any right to sue for damages anyway, so why waste their time, why waste their own money?

These new time roadblocks are really anti-victim, and they presuppose a high level of sophistication of the public, not only the public but somebody who is suffering injuries and is probably concentrating all their efforts on trying to become healthy again, and they are to know about a 120-day time period.

These time roadblocks are onerous, victim-unfriendly and really serve no legitimate purpose that I can see other than to create a bureaucratic web and to wear down the victim.

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The present and proposed systems are so fraught with complexity and uncertainty that the costs associated with an innocent victim obtaining his or her legal entitlements are excessive and constitute a roadblock. The retention of the words "serious" and "important" in the verbal threshold for general damages creates uncertainty and additional cost.

The use of these words—I haven't heard anybody today address this issue before you, but perhaps you've heard this addressed somewhere else. They're so difficult to define, these words, and when you apply them together, what do they mean? There's a cost, case by case, in determining the meaning of words that we're not even able to define by way of regulation.

The costs associated with self-employed victims determining what their entitlement is going to be is another roadblock to justice.

In my view, the draft bill simply creates more levels of legal and procedural complexity surrounding not only the issue of benefits entitlement, the AB claims, but it creates

this greater level of uncertainty in interpreting these time periods, definitions and other concepts.

My suggestion is this: Innocent accident victims need to have these roadblocks knocked down. You've gone some level, I think, in putting in this paragraph dealing with the statutory duty on insurers to take steps to settle an action as quickly as possible. It's simply codifying what we all thought was a duty on insurers to act in good faith. But it's really meaningless if you set up all these roadblocks—statutory, bureaucratic, cost roadblocks—and leave them in there. The duty of good faith is meaningless. What we need is an equality of equal bargaining power, not only between the innocent victim and the insurer but between everyone associated in the industry.

If you simply focus on accident benefit entitlements at the expense of honest and innocent victims, you create an injustice to the majority of these victims. You can't legislate cooperation and trust, but you can create a level playing field so that both parties can bargain fairly.

My suggestion and respectful submission to you is that you knock down some of these roadblocks.

Eliminate the words "serious" and "important" from the verbal threshold, just take them out of there.

If we're going to have a monetary roadblock, a threshold for monetary claims to get rid of the small claims, I suggest that it be at \$8,500. It will effectively wipe out, on a practical basis, claims that would be valued up to \$15,000.

I suggest that there be a provision to allow full economic losses based on gross figures, so we are not faced with this problem of defining net income and this very unworkable formula in the draft regulations.

I suggest that you eliminate arbitrary notice provisions coupled with monetary penalties for failure to comply. It's one thing to have these notice provisions, but when you have the kicker on it where you're taking money out of the pocket of the innocent victim if he doesn't make it, and he may be stuck in a hospital bed for six months and never have spoken to anyone to be advised of these periods, you're penalizing him.

Mr Connolly: I'm suggesting to you that the beauty of the common law, what we've had in this country for years, is that it has a capacity for fairness and justice. The innocent accident victim simply asks to be treated fairly and reasonably. The public may not know what "tort" means or what tort law is, but they know what's fair and reasonable.

Individual responsibility for one's actions is a concept that's central to what reasonable people regard as just. The simple idea that if you behave improperly and thereby injure another, you're responsible for the consequences, seems so obvious and commonsensical. The idea that both the innocent victim and the wrongdoer should be compensated equally offends most people's sense of justice.

Since 1990, these no-fault systems have floundered, but they haven't floundered, in my respectful submission, because of any focused opposition by lawyers or other interested parties; they've floundered because there's an unfocused opposition and a belief out there in society that they're not fair and that they're not fair to innocent victims.

No major public interest group or political party appears to be advocating full no-fault, yet the goal of fairness is lost if all these roadblocks are kept in the legislation and are maintained to the detriment of the innocent victim. The innocent victim's expectation and sense of fairness is offended when access to compensation for both economic and non-economic loss is not assessed on a case-by-case basis without roadblocks to recovery.

Those are basically my comments.

The Chair: Thank you very much, Mr Connolly. We appreciate your input to the committee.

ACTION ONTARIO

The Chair: We now welcome Action Ontario, Mr Wayne Kasbey and Karen MacNaught. Welcome.

Mr Wayne Kasbey: Thank you for inviting us here today to comment on the automobile insurance policies and giving us this opportunity to dress up.

Please understand, I do have head injuries and I will often refer to my notes. I have had past opportunity over the last four years to speak with hundreds of what we call "insurance victims." The issues we will cover here today represent obvious problems within that system.

Consumers purchase the insurance product to protect themselves against loss. Should a loss occur, the principles of indemnity will return that loss to a state immediately prior to the loss. One will not profit from such a loss, but will benefit for the amount of that loss. Statutory conditions are in place to ensure that insurers do not take a position in the contract more favourable than that of the consumer.

The insurers, having extensive knowledge of their product, continue to sell the product on the Canadian marketplace based on its appealing content, whatever that may be. This leaves out limitations, inclusions and exclusions of the product, leaving the consumer unknowledgeable to the instruments of the insurance contract. Without full knowledge of the product, the capacity to enter into such a contract is compromised.

Ladies and gentlemen, we feel this is completely unacceptable today in a world of information. Consumers must fully understand the mandatory insurance policies they are compelled to purchase.

Consumers must be educated. Without this educational initiative, consumers cannot possibly be expected to understand the absolute and actual needs. The industry does not yet provide for this education. For example, my former broker, when asking for clarification on my accident benefits, told me he's never heard of the Ontario Insurance Act. By the same token, the insurer is bound by the obligations and regulations to disclose the instruments of the insurance contract.

We do agree with the industry that more accurate information upon application for insurance would produce positive results. It would not only benefit the insurer, but also the consumer. The probability exists that this may eliminate some of the conflict which occurs within the individual policies. This could have a direct impact on the number of mediation and arbitration cases, but we caution that added information to an application must not infringe upon the privacy of the consumer.

Members of the panel, we urge you to support the concept of consumer education with these new policies. To educate Ontario drivers who know little of what awaits them, we have requested education time and time again with past governments. The time to implement such a program is now at hand.

Insurers have demonstrated pre-OMPP, OMPP and now the statutory accident benefits that they cannot responsibly delegate adequate medical treatments and attention for injured consumers. Trends indicate that large corporate year-end profits are consistent with better treatment programs for consumers. This suggests that consumers should shop for their insurance in larger corporations, which will directly affect competition.

As long as profits are tied to consumer welfare, there will always remain inadequate treatment and ultimately unsatisfied and unrehabilitated consumers, and the Ontario government will foot through their bills through the Ontario provincial plans.

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The insurers have demonstrated over the years that rising increases in private health care costs have skyrocketed and continue to do so. This is grossly misrepresented by the industry. We ask you to consider the latest releases of health costs and expenditures within the private sector before you agree to increase premiums.

The province is now paying the greatest percentage of health care costs associated with MVAs by way of unacceptable claims denial practices. This is unfair to the consumer and the overly burdened Ontario health care plan. It is time, ladies and gentlemen, to look to alternative methods of controlling Ontario health expenditures.

For example, a simple cost-effective remedy would be to utilize the pink slip as a health card for emergency and other MVA-related treatments. The benefits are ultimately to the province, which in turn, upon implementation, may even be passed on to consumers by reductions in aggregate public health care costs associated with premiums.

This could be the answer, as we see it. Billing would be direct, with little added cost to the facilities, but I state again, a significant cost saving to the OHIP system in Ontario. We say to you here today, the simplest method of OHIP renewal is to ensure that insurers pay for MVA-related expenses.

The committee has heard from the industry on fraudulent claims. Need I remind you, the Ontario Insurance Commission carried out research on fraud claims. The result was such that the number of fraud claims is so insignificant that meaningful statistics have not been kept. In fact, they used American statistics throughout the study. WCB realizes approximately 3% of total claims that are fraudulent. For the industry to even suggest upwards of 40% is unrealistic and based on assumptions.

The influence of the powerhouse insurance lobby must be curbed in the future. The industry has shown over time that increases are necessary, but have neglected to support their claims with adequate data. Our government must not and cannot continue to accept industry claims at face value. You have seen, noted and questioned the absence of supporting documents throughout the hearings. The multitude of answers you receive tell you something. Please, for the sake of consumers, create a royal commis-

sion to investigate the unfulfilled, ambiguous claims of the insurance industry. Do it for your constituents.

The use of DACs in Bill 164 has been a significant improvement over the outdated IMEs. This concept is on the right track. With some fine-tuning, this can continue to be a supportive factor in conflict resolution. The problem associated with DACs is that it can make access to benefits a complicated matter. Accessing benefits can effectively be dealt with in an educational initiative by our government. DACs were created in hope of reducing associated conflicts involved in paying claims and to reduce the timeliness and costs associated with traditional conflict resolution. Many insurers ignore this concept. This leaves the injured patient without care.

The consequences of injury leave the injured victim in a physiological and emotional state of healing. To add psychological and financial variables to the formula devastates not only the patient, but the family as well. Past and present claims denial tactics manifest themselves in consumer abuse, abuse that is counterproductive to the patient's rehabilitation.

Corporate financial penalties or deterrents counteracting poor business ethics must be put in place. The ambiguities within past and present legislation leave many opportunities for abuse by insurers. This results in financial ruin and a significant number of other devastating barriers for the injured person to conquer. Social scientists support our claims here today and add that such tactics significantly add to the problems as a whole, which many cannot bear for extended periods of time. The results further impair one's ability to obtain accident benefits coverage.

We are here today to talk about rate reductions. Let me remind you, the concept of auto insurance is about consumers' welfare. Rates have to be secondary to wellbeing. Although a significant portion of the consumers' disposable income is spent on premiums, they continue to climb. Some are paying premiums equal to or greater than their mortgage and rent payments. Such premiums will drive down the economy, slow the marketplace by placing barriers on mortgage loans, personal loans and the like. Ends must be achieved based on the wellbeing of your constituents.

We have the problem of dealing with primary and secondary payors. As a province, more than 40% of automobile holders have other insurance plans. We must streamline these plans to eliminate the costs associated with double coverage. The confusion between who pays what is again on the consumer's uneducated shoulders. As a result, the consumer faces even further burdens to those already discussed here today.

A clear, direct path must be established to access benefits immediately following injuries. Let me tell you from experience and research that the health of accident victims is sacrificed for profits. Ladies and gentlemen, we would like to see this end.

I submit to you that the legal, medical and enforcement mechanisms in place today are confused by the complexities and the number of past changes to the automobile insurance. This overhaul will add to the confusion. When the insurers are confused, they have the experience,

resources and the power to effectively interpret the legislation, mostly in their favour. Tell me, what do the consumers have to rely upon?

The OMPP placed a unique twist on auto insurance. We were given a system that would have worked, perhaps with a little fine-tuning. To continue extensive transformations is counterproductive. In 1990, the right to sue was eliminated for non-catastrophic injuries. The consumers saw no premium reductions. Thus we can only conclude by the industry's rate determination that the right to sue has no economic value. Over the past two weeks, the industry has suggested otherwise. If the right to sue for economic loss has a value, then the consumer should have realized premium reductions. Saying that, I'm still waiting for mine.

An increase in premiums based on the reinstatement of the right to sue must be balanced and offset by the indicated savings from the past. The Ministry of Finance requested William M. Mercer to proceed with an actuarial cost study. The recommendations I do not need to reiterate here.

What happened? What happened to the estimated 30% to 44% savings the insurers' aggregate claims costs were going to drop? The consumers realized no relief. The industry drives up premiums based upon theory and assumptions. The results are enormous profits year after year since 1990, at the expense of the consumer.

I've received the superintendent's year-end reports. I have failed to recognize insignificant assets and returns. Mean returns are upwards of \$720,000, with many into the millions of dollars. The point I make is simply this: If the insurer cannot produce acceptable development factors to meet the acceptable profits, then they should not be allowed to write automobile policies in Ontario. Simply put, if you can't take the heat, get out of the kitchen. I say again, low profits are consistent with poor health care for your injured constituents.

Ms Karen MacNaught: I came here today to speak to you on behalf of the many people who, following automobile accidents, become long-term or permanently disabled. Although our broken bones heal, something goes seriously wrong with our recovery. We experience something called severe widespread muscular pain, cognitive dysfunctions, including difficulties with concentration, attention, memory, impaired thought processing; in fact, all these symptoms are typical of and similar to that of traumatic brain injury.

As a result, we have trouble responding and understanding what others are saying to us. We call it garbage in, garbage out. Commonly, we suffer from anxiety and depression as a result of our constant pain and we often have suicidal thoughts as well. These are a few of the many symptoms that are associated with illnesses such as chronic fatigue syndrome, fibromyalgia and the like.

Generally speaking, these are progressive, degenerative and chronic illnesses, the most significant attributable cause being motor vehicle accidents. Our problems are difficult and complex. For example, obtaining a proper diagnosis depends on the physician's experience and education, even though the diagnostic criteria are well documented. For some, diagnosis takes up to five years.

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The insurance industry resists most of these claims. The insurer has no justified right to deny these claims. The effects of the illnesses are catastrophic on the claimants and their families. The significance stress imposed by insurers' tactics add to the patients' distress, and this has been well documented as well. Naturally, we become unable to cope with the world of insurance companies, lawyers, claims managers, pain centres, doctor after doctor, and constantly all the while worrying about finances while adjusting to this new world we've been thrown into.

We find that many require medical aids and home modifications that we just cannot afford and our insurers refuse to pay. Most cannot cope with what is happening and become dependent on others to make important decisions for us. Like you, we once took for granted that we would always be able to make these decisions for ourselves. Our conditions are chronic and our mobility can be severely restricted. The pain does not go away, and our learned coping skills are no longer effective and tend to disappear over time.

Excuse me, sir. I do suffer from a brain injury, and I find it very difficult to read and concentrate. I can only hear the sound of the gentleman beside me speaking. It's very distracting.

The Chair: Would the committee come to order, please.

Ms MacNaught: I realize it's me. Okay.

In reality, we have purchased nothing more than a share in an insurance nightmare.

The insurance industry has an appalling label for us. The insurance industry, ladies and gentlemen—take a look at this, please. They call us the living dead. Excuse me just for a moment. I'd like you to take a moment to think about this. The insurance industry refers to long-term disabled people as living death since their actuaries view it, profitwise, worse than dying. The disabled now may have higher living expenses than the able-bodied person.

Individuals who find themselves in this position may be down, but we are certainly not out. Our goals are simple: We try to retrieve our independence, self-esteem and moral rights. Our expectations do not exceed the insurers' obligations.

The Chair: Would you like a few minutes, ma'am?

Ms MacNaught: I'll be okay. I've done this three or four times at home so I would be prepared for it, but I wasn't. I'll be okay. Thank you.

All too often the insurer becomes part of the problem and not the solution. Most insurers know that our ability to fight them is limited because of our limitations and that financially most of us will just walk away from our claims. This is a coping mechanism that people use. Giving up at the insurer is not a weakness; it's a method of survival. And I was one of the lucky ones, because my diagnosis was relatively swift, considering that three to five years is the norm.

There are few insurers who recognize their ultimate responsibility. Most insurers refuse to acknowledge medical science and do not accept chronic illnesses in their scope of contractual obligations in paying long-term

claims. Most people living with long-term chronic illnesses are afraid to come forward. The industry has shaped the market mould over years of persuasive lobbying. Insured persons live day to day in fear of their insurers. I know this to be the case. One wrong word and that's it, your benefits are cancelled.

You have to find a way to reach out to these people, ladies and gentlemen, possibly through support for chronic pain centres, rehabilitation centres and the like. I don't have any answers for you today, but we strongly urge you to make this effort in preparing new regulations. These people desperately need your help and they need it now.

In addition, let me speak to you on what I observed last week being told to you by the insurers on the issue of soft-tissue injuries. They would have you believe that with soft-tissue injuries, we're talking about some bruising. Often this may be the case, but more often it is not. Soft-tissue refers to every part of the human body that is not part of the bony skeletal structure. The opportunity for organic problems is enormous upon a traumatic event. Although a soft-tissue injury may not appear too damaging initially, the complications arising from such an injury can be extremely dangerous, for example, internal bleeding, blood clots, tumours or lumps, phlebitis, and the list goes on. Ladies and gentlemen, soft-tissue injuries are not always simple, quick-fix injuries like the insurers would lead you to believe. I had to have two major surgeries from soft-tissue injuries. I didn't put that in here.

The hearing has done a lot. I've heard a lot of whining before these hearings regarding AB payments to non-wage earners. Don't forget that the legislation makes auto insurance mandatory and that non-wage earners pay premiums equal to or greater than wage earners. Simply put, they've paid for the coverage; they're definitely entitled to the benefits. Consequently, if they are not entitled to the benefits, they are entitled to reduced premiums.

I'd just like to add this note. Unless requested by the patient, please spare us from the services of case managers. Our physicians are our case managers. We just don't need another added stress that's appointed by our insurance companies trying to manage our lives for us.

Finally, we urge you to get a knowledgeable experience of what the disabled communities face in their attempts to obtain benefits from their insurers. As such, we support an investigation, perhaps by a royal commission or task force, into the realities of the auto insurance product. We have watched the presentations on TV and we have acknowledged that consumer advocacy has not really been achieved here in Ontario.

We've supported the claims that we make today within our submissions. If you have any questions, Wayne and I would be happy to try to answer them for you.

The Chair: We thank you very much for your presentation, and we recognize the emotionalness of the issue. Your time has expired, and we thank you very much for making a presentation to the committee today.

Ms MacNaught: Thank you for listening to our side.

The Chair: It will be taken into consideration in our deliberations, I can assure you.

ROYAL INSURANCE

The Chair: We now welcome the Royal Insurance Co. Please identify yourself and your associates and proceed.

Ms Linda Matthews: Thank you, Mr Chairman, and good afternoon, members of the committee. Thank you for allowing Royal Insurance the opportunity to appear before this committee to express our views on the proposed new auto insurance legislation. With me today are Jacinta Whyte, our underwriting manager for our personal lines division, and Carol Jardine, our regional manager here in our Ottawa regional office. I am Linda Matthews, vice-president of the personal lines division.

As many of you know, Royal Insurance is a leading provider of insurance services, operating throughout all provinces and territories in this country. We have experience in this business going back to 1851, when we opened our first office in Montreal. As a part of the Royal Insurance group of companies, Royal Canada's expertise also extends internationally.

Our mission is to lead the Canadian insurance industry through expertise, innovation and outstanding service to our customers and business partners, and in our pursuit of this mission, we employ approximately 2,400 people, close to 1,500 of whom work in this province.

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In terms of our business, Royal is the fourth-largest provider of auto insurance in Ontario, with more than 200,000 vehicles insured at a premium level of over \$310 million. When you consider that our auto insurance premiums Canada-wide total about \$483 million, you can appreciate that Ontario is indeed a large market for us.

Royal is a company of people who are also consumers of our products. We understand the frustration surrounding the cost of auto insurance in this province. We had major concerns about Bill 164 and predicted the double-digit escalation of premiums that has since resulted.

I should tell you up front that Royal can deliver and service any product that is legislated. Implementation, however, is not our main concern. What does concern us is the ultimate cost to consumers, and we fear that under the proposed new legislation consumers will continue to bear costs that are higher than necessary.

Royal applauds the Ontario government for taking action to correct the significant shortcomings of the existing auto insurance legislation. We also applaud the process, especially the initiative to seek input at an early stage from the industry. In addition, we commend the government for being open-minded. The fact that Mr Sampson has publicly stated that the proposed plan may not have hit the target right on shows that the government is prepared to listen. It demonstrates that government is as concerned as we are in the industry in getting it right to ensure that the product we end up with meets the needs not just of the insurance industry or the regulators but the people of this province.

You will note that our views and recommendations are in general support of the earlier submission you have received from the Insurance Bureau of Canada. While our presentation will focus on several issues, it is the cost to the consumer that Royal is primarily concerned with.

If benefits are to be provided as entitlements, as opposed to indemnification, experience shows that the

system will continue to be open to abuse, fraud and overcompensation. This in turn will lead to higher prices.

If the system is saddled with complexity, high administrative costs and escalating medical rehabilitation costs, many of which are possibly unnecessary, then premiums will rise even further.

Who pays when the price goes up? Well, the answer of course is we all do: you and me and the people of Ontario who own and insure an automobile. Therefore, we all have a vested interest in developing a product that will provide fair compensation at a reasonable price. This in turn will lead to more stability in the marketplace.

In repealing Bill 164, the government has an opportunity to refocus the auto insurance product on the founding principle of indemnity.

My colleague Carol Jardine will address our concerns in more detail.

Ms Carol Jardine: Royal believes that the key opportunity for improving the government's current proposal lies mainly in some further refinement of the statutory accident benefits.

Medical and rehabilitation benefits: Royal supports the reintroduction of limits for medical, rehabilitation and attendant care benefits.

As evidenced by the industry trends in appendix A, the rapid escalation in medical and rehabilitation costs is, we believe, largely due to the overtreatment of soft-tissue injuries and feel-good treatments. This conclusion is further supported by the Spitzer report conducted on whiplash-associated—soft-tissue—disorders on behalf of the Quebec task force of the SAAQ. The Spitzer report has now been endorsed by the Ontario Insurance Commission and has been put before Ontario's insurers for implementation.

We believe in order to control the upward spiral of these costs that firm controls must be put in place in the following areas:

Conflict of interest of referring parties: Whether those referrals are legal-medical, health care or insurer based, this issue must be addressed by the Ministry of Health in its upcoming review of the health care process.

Accreditation: We recommend professional, outcome-based accreditation of health care practitioners, plus the right of insurers to direct care of the injured parties to those accredited facilities.

Standardization: There should be standardization of treatment protocols and approved fee schedules for all health care practitioners.

Without strong controls, both the health care system and the insurance industry are severely hampered in any effort to ensure all injured parties receive the appropriate level of care in a timely and cost-effective manner.

Regulatory wording: Another area of our concern involves the definition of "accident." We strongly recommend that the word "indirectly" be removed from the definition, as its use continues to expand the scope and coverage of automobile insurance to non-automobile incidents. Examples of potential abuse in this area are shown in appendix D.

In order to assist the government in the implementation of new regulations, we have prepared detailed recommendations and suggestions for consideration in appendix F.

Fraud control and penalties: Insurance fraud is thought to be the second-leading source of illegal profits after illicit drugs in North America. As established in a recent IBC study, the estimated annual fraud losses to the property and casualty insurance companies in Canada range between \$1 billion and \$2 billion, or between 10% and 15% of total claims.

As evidenced by this week's news items, fraud in the automobile insurance industry is organized and deliberate and it's not a problem that can be tackled by any one group. It requires a concentrated effort by all stakeholders to tackle the problem and to minimize this leakage from the insurance system.

Royal fully supports the position put forward by the Insurance Crime Prevention Bureau that the industry must be provided with reasonable ability to prove fraud and the facility to deny all benefits to guilty parties. To that end, we strongly recommend that all benefits be denied for wilful fraud, driving without insurance and/or a licence, and injuries sustained in the course of criminal activity.

Uninsured motorists: Collision reporting centres in Metropolitan Toronto have discovered that approximately 20% of reported claims involve uninsured motorists. These people have chosen to drive without insurance and have indicated a blatant disregard for the laws of the province. They've made a deliberate choice not to have insurance protection for themselves or for the protection of innocent victims.

Insured persons are confused when they discover that these uninsured people are able to collect accident benefits from the insurer of any other vehicle involved in the accident. Their bewilderment turns to anger when the uninsured motorist is completely responsible for the accident but still entitled to benefits. Why should these uninsured motorists be entitled to receive any benefits from an automobile insurance policy?

The SABS statistical plan does not segregate claims for uninsured or unlicensed motorists; therefore, we've analysed a small sample of our catastrophic claim file. We realize that this is a small sample, but it does demonstrate the impact of claim costs for uninsured and unlicensed drivers in the system. Of 25 files reviewed, 8% involved uninsured drivers and a further 8% unlicensed drivers. The total claims cost for these claims was over \$41 million. Of this, over \$4.3 million was attributed to uninsured drivers and an additional \$1.2 million to unlicensed drivers.

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What must be understood is that these uninsured motorists are taking money out of a system to which they've contributed no premium. These costs must be borne by law-abiding citizens who pay their premiums, adding unjustly to the premiums that those people pay.

SABS summary: We estimate potential future overall savings of 3% to 5% in the cost of automobile insurance with: additional controls in the management of accident benefits; fraud detection and control measures; denial of benefits for wilful fraud, driving without insurance and/or licence, and injuries sustained in criminal activities.

However, if additional cost-control measures are necessary, then Royal would recommend that the govern-

ment revisit the provisions contained under the tort proposal.

Tort: In 1990, the Ontario automobile insurance system was amended to eliminate, as much as possible, legal fees, then estimated to be about \$500 million per year. With the proposed increased access to tort, we believe that now the door has reopened to allow at least 20% of this prior saving to be added back into the cost of auto insurance in Ontario. Royal's experience shows that the involvement of lawyers in case handling prolongs and complicates the process, driving up overall settlement costs. Again, increased costs mean increased premiums for consumers.

A key element in controlling these costs would be the addition of the words "permanent" and "physical" in the threshold definition, mitigating the need for a monetary deductible.

To assist in your deliberations, we attach additional recommendations in appendix F.

Furthermore, the potential introduction of contingency fees in Ontario should be avoided in automobile litigation cases.

I'll pass you back to my colleague Ms Matthews and she can conclude the presentation.

Ms Matthews: We just have a few other concerns we'd like to table this afternoon.

Regulation: Royal supports the move to a file-and-use rate-setting philosophy. However, it is our belief that the proposals, as currently outlined, are cumbersome, inefficient and perhaps work against the free market system. We believe this is to the detriment of Ontario consumers.

Our position is that government should not be involved in the setting or prescribing of rates, premiums or the price to be charged, but instead should be focused on solvency and a limited range of market conduct issues.

Also of significant concern is the fact that some companies, through their writing of collateral benefit plans, have recently been successful in excluding benefit for injury to automobile accident victims. We've included a sample wording in appendix E. Our difficulty here is that this practice is contrary, without just cause, to the collateral source regulations. If allowed to continue, it too will add significantly to the costs of automobile insurance in Ontario.

OHIP assessment: With the government's stated objective of price control of automobile premiums, the inclusion of an OHIP assessment is a factor that will only add to and increase the overall cost equation.

Let me conclude: With the introduction of the government's proposed plan, Royal believes that we can eliminate any planned rate increase for 1996. As the experience of the plan unfolds, we will review our ability to decrease premiums as we did in 1991.

However, we believe the government's proposed plan, modified to reflect our recommendations, would further reduce the loss-cost trends, as indicated by the Miller study. Royal would commit to maintaining its current average rate levels through 1996 and 1997, a two-year commitment to no overall rate activity if these proposals are adopted.

We thank you for this opportunity to come before you and we offer our continuing support and assistance in

finalizing the reforms. We believe we all share a common goal in this process: to ensure that the final product is fair and affordable and provides long-term stability and access for the people of Ontario.

Mr Crozier: Thank you for the presentation. I think your overview has been concise. As well, what I have had the opportunity to look at, the information that accompanied it, seems to be very complete.

You said at the outset that you, in essence, support the IBC proposal that we heard last week. I'm interested in that, notwithstanding their proposal, they said that there would be increases in rates that ranged anywhere from 7% to 9% or 10%, depending on what you included, like the recovery of OHIP costs, that sort of thing. Yet in your conclusion, you feel that, "As the experience of the plan unfolds, we will review our ability to decrease premiums as we did in 1991." How do we compare that with the IBC proposal that they in fact would increase?

Ms Matthews: I believe, Mr Crozier, that what you're talking about with respect to the Miller study and the IBC proposal were rate trends of, as you say, 7% to 8%. We certainly see rate trends in the future as well, but what our proposals do, we believe, is allow us to further reduce those trends, by a 1% to 2% factor. But the focus on fraud would take a major component of cost out of the system. It would reduce the base where you're starting from. Again, the industry trends—excuse me, let me perhaps clarify.

Mr Crozier: We only have a couple of minutes.

Ms Matthews: The industry figures reflect average trends in the industry. Different companies have different experience, different estimates of their current book. This would give us an opportunity, with our proposals, to reduce the increased trends to the extent that we could have a flat increase over the next two years.

Mr Crozier: But you say, "With the introduction of the government's proposed plan"—that's not following any of your suggestions—you can eliminate your increase for 1996.

Ms Matthews: This year.

Mr Crozier: So you just won't increase rates at all in 1996, and that in fact, as it unfolds, the government's plan, you think you can decrease premiums.

Ms Matthews: No, with our proposals.

Mr Crozier: That's not what it says here. It says, "With the introduction of the government's proposed plan..."

Ms Jacinta Whyte: The issue of price in a rating is a function of one's rate adequacy within your current product profile. So it's a function of your mix of business, your claims management process, your own internal trends and the pricing. Currently the pricing at Royal is not rate-adequate but it's closer to rate adequacy than much of our competitors. What we are looking at is the additional impact of our position relative to the government plan, in addition to which are additional measures and controls which will actually add to our position and commitment to maintain price overall.

Mr Crozier: My point is that you're saying, "With the...government's proposed plan..." I wanted to clarify that. So it isn't the government's proposed plan; it's the government's proposed plan as amended by you?

Ms Whyte: The government's proposed plan currently does decrease the cost in the system, there's no doubt about that. But the ability or the level to which it decreases the costs in the system is a function of individual companies' rate activity and rate adequacy at that time. Royal as a company is more rate-adequate than many of our competitors because of our pricing strategy over the long term. It has been our position to review our pricing and price adequacy on an annual basis throughout the whole process, across all plans.

Mr Crozier: All that said, it doesn't make me feel comfortable that rates won't go up. I think my time's up.

Ms Whyte: We're talking from Royal's perspective, not the industry's.

Ms Matthews: Mr Crozier, with respect to that final comment about confidence, when Royal was in a position to review changes in the past, in fact we put before our consumers a 6% rate reduction. We set our prices based on the adequacy of the rates and, given the opportunity, we have proven in the past that we would reduce rates.

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Mr Kormos: Ms Matthews, people, how are you?

Ms Matthews: Fine, thank you.

Mr Kormos: I thought there was a trio of lawyers up there. I saw those Mont Blanc pens and I thought, "By God, they've got to be"—

Ms Whyte: Excuse me, I'm a cheapie.

Mr Kormos: Well, you're the poor country cousin, obviously. Don't hide it. Put it back up there on the table there. I thought we had a gaggle of litigation lawyers.

Ms Matthews: Does he have one too?

Mrs Marland: The reason he noticed is because he has one.

Mr Kormos: I know. I used to be a lawyer.

The Chair: Did you have a question, Mr Kormos?

Mr Kormos: Zurich is the second-largest auto insurer in the province and they have a substantial amount of auto insurance coverage, a great deal of experience in the industry. Huh?

Ms Matthews: Yes.

Mr Kormos: And high, good-quality skills in terms of actuarializing and costing policies, I trust. They must. How come then the IBC, the Insurance Bureau of Canada, George Cooke et al, tells us, as has been referred to, that this scheme is going to result in 7.6% premium increases, but then Zurich—you're the fourth-largest insurer in the province, auto insurance—says: "No. Seven point six? You guys are from Mars. We're looking at double, maybe three times that in terms of premium increases"? And you're talking about zero. How is it that IBC can be so at odds with a major, respected, skilled, capable insurer? Because I've got to tell you, when Zurich said that, they weren't referring, as you did, to their own premiums; they were talking about industry-wide premiums. So how can IBC and Zurich be so at odds? Is one of them right out to lunch?

Ms Whyte: Will I have a crack at that?

Ms Matthews: Go ahead.

Mr Kormos: Ms Matthews wanted to answer it, and I've got an idea what you're thinking, but go ahead.

Ms Whyte: Mr Kormos, as always, we're entertained and amused and confused by some of the questioning that

you put before us. However, we are in a free-market enterprise system and we do look at individual companies and their ability to do their business and manage that business over a period of time. We're not in a position to comment on Zurich's business practice, the level of their practice or, indeed, the competency within those business practices. We can only speak for Royal, and Royal, as its history and as Ms Matthews has pointed out—

Failure of sound system.

Mr Kormos: —and I appreciate you're talking about your insurance premiums. I've got to tell you, Pilot's got my coverage now, unless you don't want it. But maybe Royal's next.

But IBC is talking about the industry in general; Zurich is talking about the industry in general. Both of them have strong, long-rooted positions in the insurance industry. You're telling us that from Royal you're not going to see premium increases. What about insurance premiums across the board? You people have enough expertise and enough experience in this industry to predict with some reasonable accuracy whether this bill is going to result in zero premium increases across the board, 7.6% like IBC says, or 15% to 20% the way Zurich says. Who's right, who's wrong? You can't all be right.

Ms Matthews: I guess our position is, Mr Kormos, as we stated in the paper, a general support of the IBC's assumptions and positioning. You have, what, over 200 insurance companies in this province. Every one of them establishes what its market strategy is, what its rates are. Depending on where you are as an individual company, you can have a different starting point. Therefore your assumptions, of course, produce different results.

Mr Kormos: Some leaders in the industry have said there are simply too many insurance companies. Do you agree with that?

Ms Matthews: What we have seen happening over the last several years is a major consolidation of insurance companies.

Mr Kormos: And would you like to see yet fewer?

The Chair: Thank you, Mr Kormos.

Ms Matthews: I'm afraid I'm out of time, Mr Kormos.

The Chair: If we could move to the government side.

Mr Matthews: We thought you meant we were out of time, Mr Chairman.

The Chair: No.

Mr Kormos: No, the government is out of time on this bill.

Mr Jim Brown (Scarborough West): This is a great presentation and I just wanted to go over some numbers with you. In your presentation, on page 1, you said that you have 200,000 vehicles for \$310 million worth of premiums. What market share would that be in Ontario?

Ms Matthews: We have approximately 5% to 6% market share.

Mr Jim Brown: In terms of billing or vehicles or both?

Ms Matthews: I believe market share is on vehicles.

Mr Jim Brown: Would premiums sort of follow—

Ms Matthews: Yes. We would have 5% market share of premiums as well.

Mr Jim Brown: I'm just trying to get a handle on costings and overhead expenditures and so on. I was looking at that great chart in appendix A and I noticed that the total accident benefits per car is \$414.

Ms Matthews: Yes.

Mr Jim Brown: If I multiply that out by 200,000 vehicles, I get \$82 million spent—

Ms Matthews: That's not your total premiums, sir. That's just the component for accident benefits. The average premium would be in the neighbourhood of \$1,000 per vehicle.

Mr Jim Brown: Wait a minute. If I add up all of these boxes here, it comes to \$414. Okay? So \$414 total accident benefits, that's a total cost for the accidents per car.

Ms Matthews: Accident benefit portion of the premium per car. I'm sorry, am I misunderstanding the question?

Mr Jim Brown: I multiply it out and I see you spending \$82 million and taking in \$310 million. Where am I going wrong? Where's the difference?

Ms Matthews: The numbers in this report are all-industry figures. We felt that was a better way of projecting—

Mr Jim Brown: Okay, it's even better. But if you take \$414 a car times 200,000 cars, you spend \$82 million, your share. You would spend \$82 million and you take in \$310 million. I'm just trying to figure out where I went wrong. You take in \$310 million.

Ms Matthews: Yes, Royal Insurance.

Mr Jim Brown: And if I use the industry average of \$414 a car times 200,000 cars, you pay out \$82 million. I'm trying to figure out where the difference is. Where did the \$227 million go?

Ms Jardine: Into damage to vehicles, into tort, into reserve, into all the other areas.

Mr Jim Brown: Where are those figures here?

Ms Jardine: This is only accident benefits, so you're quite correct. If you use the math that you used, you would come up to that number, but that's only one component of the automobile insurance premium.

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Mr Jim Brown: Where's the rest?

Ms Jardine: We're not dealing with the other costs of the product, being—

Mr Jim Brown: So the other costs are not in here.

Ms Jardine: No. We're only dealing with—

Mr Jim Brown: Do you have any idea, of the \$227 million, what the split is?

Ms Jardine: Not off the top of my head, no.

Mr Jim Brown: Can we get that from you, in the same fashion? You've done a great job on this chart here and I'm sure you could probably do a great job on the rest of the components. I'm just curious as to what the other components are and the figures.

Ms Matthews: Since these data were supplied by the IBC, we would have to go back and entertain trying to get at that information for you.

The Chair: Thank you very much. We do appreciate Royal Insurance presenting to us today. Now we are out of time.

Ms Matthews: Now we are done. Thank you.

REGISTERED MASSAGE THERAPISTS OF EASTERN ONTARIO

The Chair: We now welcome the Registered Massage Therapists of Eastern Ontario, Ms Fitch and Mr Alexander.

Ms Pamela Fitch: Good afternoon, members of the committee. My name is Pamela Fitch. I am a registered massage therapist specializing in trauma recovery and I have been in private practice in Ottawa for eight years. I'm also a member of Registered Massage Therapists of Eastern Ontario, RMTEO. With me is Doug Alexander, a registered massage therapist and another member of RMTEO. He is an independent massage therapy assessor at a local DAC and editor-in-chief of the *Journal of Soft Tissue Manipulation*.

We are grateful to your committee for giving us the opportunity to present our views regarding this important legislation. In general, RMTEO supports many of the proposed changes because the legislation will ensure greater accountability among health professionals as we help our clients to rehabilitate. Unfortunately, according to this legislation, registered massage therapists, RMTs, are not designated as one of the health providers listed under the statutory accident benefits schedule, and it is to this point that we wish to address our remarks.

Under the proposed legislation massage therapy is not included, and our clients will be the losers. Massage therapy would be permitted if it is recommended in the treatment plan of a physician, a chiropractor, a physiotherapist, an optometrist, a dentist or a psychologist. However, if one of these health practitioners is unfamiliar with the benefits of massage therapy, such a treatment plan may not be suggested. In these cases, clients would be left without massage therapy as a benefit and their pain left unaddressed. In fact, the client may actually end up costing the insurer more money in the long run. Myofascial pain syndrome, so commonly a result of motor vehicle accidents, and successfully treated by massage therapy, will not be treated by the health practitioner who the RHPA states is trained to do so.

For many years, registered massage therapists have treated clients who are recovering from motor vehicle accidents. Massage therapy is unique among all the health professions because its principal medium of intervention is touch. Our hands are our tools. We work manually on the soft tissue of the individual, assessing with our fingers the degree of restriction due to pain, adhesion or micro-scarring that a survivor of an MVA may experience. We have our hands on our clients for up to an hour, palpating deeply into the connective tissue and searching for fundamental causes of muscle dysfunction. Our ability to determine whether someone's pain is a result of injury or due to occupational stress stems from spending literally thousands of hours assessing pain and muscle dysfunction with our hands. Our strength lies in our practical, hands-on techniques.

Within a multidisciplinary framework, there are many accepted modalities for the treatment of an injury due to a motor vehicle accident. The client may be prescribed anti-inflammatory or muscle relaxant drugs, take time off work or consult with a chiropractor, physician or physiotherapist. Each of these interventions has been proven to

be successful in a number of cases, but not in all. Clients may or may not have resolution to their discomfort, depending on their general health, their level of fitness, their degree of flexibility or the effects of a previous injury. If the above treatments have insufficient benefit, a client may be sent to a psychologist who determines if there's a psychological reason for the pain. If, after two years, a client still experiences problems, which is not uncommon, he or she may be unable to work because of a chronic pain syndrome or fibromyalgia, and as a result cost the insurers even more.

Massage therapists do not claim to have a solution for all chronic pain syndromes and post-injury recovery. However, we frequently see clients who've been around the system for two or more years seeking relief from unrelenting headaches and unresolved pain due to motor vehicle accidents. They are astonished to discover that through massaging the muscles, reducing muscle spasms, addressing trigger points and soft tissue restrictions, their headaches and spasms may reduce or disappear completely. If we were to see these same clients soon after the injury, the recovery time would likely be greatly decreased and costly chronic pain syndromes might be averted.

RMTs take their role as health professionals seriously. We support the enhanced requirements for accountability which this legislation establishes, but with accountability comes a need for improved communication between RMTs and the insurance industry, one of the principal issues which our profession is facing currently. For example, I've heard some therapists say that they cannot understand why insurers do not ask them for progress reports on their clients. Under the RHPA, we are required to have permission in writing from our clients to divulge any information about their case to anyone. Massage therapists must wait to receive these waivers prior to sending in any reports. Recently, in consultation with insurers, we realized that many claims adjusters wanted RMTs to simply send progress reports with their monthly billings. Neither profession had taken the time to establish this requirement clearly.

As a result of this discovery, our profession is now actively educating practising therapists as to the needs of the insurers. Through RMTEO and the OMTA, whom you met last week, regular assessment and re-evaluation models and reporting requirements have been shared with practising therapists so that the quality of care remains high, consistent and focused on recovery from an MVA to pre-existing levels of function.

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As massage therapists, we want our clients to recover quickly and we are prepared to be fully accountable for our treatments. We have a place in the recovery of motor vehicle accidents. We are legislated under the RHPA as health practitioners who assist in the rehabilitation of soft tissue injury and pain. I ask you to include massage therapists in the SABS under the definition of health practitioner.

Thank you for your attention. I would now like to ask Doug Alexander to speak on the cost-effectiveness and efficacy of massage therapy as a treatment.

Mr Doug Alexander: Good afternoon, members of the committee. Thank you for giving me this opportunity to speak to you. I've been a practising massage therapist for 11 years and am the founding and current editor-in-chief of the *Journal of Soft Tissue Manipulation*. I've served on the faculty of the American Back Society and the Physical Medicine Research Foundation. I currently am writing a textbook on connective tissue massage for Churchill Livingstone, a major medical publisher in England.

My massage therapy practice is located in Ottawa. In my practice I focus mainly on long-standing headache, low back and neck pain complaints. These may range from several months to years and occasionally decades of duration. I also serve as an independent assessor for a designated assessment centre.

Massage therapy works at the physiological level to normalize muscle spasm. Like a very sophisticated biofeedback machine, the massage therapist systematically explores the client's muscles for spasm and fibrosis. When muscle spasm is found, the pressure of the therapist's fingers allows the client to become precisely aware of what muscle or subvolume of muscle is affected. The massage therapist then guides the client's nervous system to reset the tonus, or the resting tension, of the muscle towards a more appropriate level. As the client relaxes, the tissue is manipulated to further the relaxation and begin restoring normal muscle length. Over the course of the treatment series, the client's musculature approaches normal tonus and the frequently large component of the impairment that arises from muscle tension and spasm is resolved.

The precise clinical skills of the massage therapist are combined with caring and respectful touch. This type of touch is very therapeutic and has been shown in scientific study after study to produce a relaxation response which is mirrored by changes in blood hormones and nervous system tonus. One of the key findings of a recent landmark report on whiplash was the importance of the clinician in placing clients at ease and reassuring them of the normalcy and benign nature of their symptoms. Massage therapists are uniquely placed to provide this reassurance.

The physical learning that begins on the massage table continues off the table, as the client practises movements that restore pain-free and functional motion to the neck, shoulders and back. The ongoing assessment of the muscles during treatment places the massage therapist in a unique position to monitor the effects of the client's exercises and either reassure him when pain is necessary and unavoidable or temper his enthusiasm when he's pushing too hard and is reaggravating the condition.

All the health care professionals listed in the statutory accident benefits schedule perform valuable and necessary services for motor vehicle accident claimants. Massage therapy is an invaluable therapy for the subset of claimants who experience muscle spasm and tension problems.

When people have unresolved problems with muscular tonus, their symptoms do not resolve fully. They become an economic burden to all of us. In genuine efforts to recover, they visit their physician more frequently and expensive and inconclusive diagnostic tests such as CAT

scans and MRIs are often performed. Doctor shopping can go on for years. If massage therapy is finally employed, it often gives significant relief. However, the case is often much more difficult to resolve than if they'd initially received appropriate care.

While not all claimants who become chronic after motor vehicle accidents suffer from muscular tonus problems, experience in my clinic and as an independent assessor with a designated assessment centre leads me to believe it's a very significant proportion of unresolved cases.

Massage therapists are accountable to the College of Massage Therapists of Ontario under the Regulated Health Professions Act, which regulates all health professions in Ontario. Our scope of practice demands that we perform needs assessments and either refer the person on or generate a treatment plan if massage therapy will be instrumental in their recovery. This is for any client, not just motor vehicle accident claimants. Our professional association, as Pam has mentioned, is also actively working with the insurance industry to establish rapport and guidelines.

Massage therapy performs a valuable and necessary service for some motor vehicle accident claimants. Including massage therapists in the health professional citation of the statutory accident benefits schedule will ensure that massage therapy will be adequately available to those people who require it. This will help speed recovery for some and will remove a major stumbling block to recovery for others. We will all benefit as these people return to functional, enjoyable lives.

Thank you for this opportunity to address you on this important topic. If I or Pam may be of further assistance in later deliberations, please do not hesitate to contact us.

Mr Silipo: Thank you very much for the presentation. It's certainly my sense, although I'll let them speak for themselves, that there's been some understanding through these hearings about the need to broaden the definition to capture certainly those health care practitioners who are covered under the Regulated Health Professions Act. My sense is, that's also been the indication that the government members have been giving. I thank you for reminding us of that and pointing out again the need to do that.

I just wonder, while we have you here, if you have any comments to make around one of the other recurring themes that we've heard through these presentations, which is the big increase in rehabilitation costs as being one of the big factors that we keep hearing about, certainly from the industry, that has driven costs up and therefore is keeping them, I think they would argue, from being able to lower premiums.

Mr Alexander: I'd like to address that as best anyone can or as I can. There was recently a landmark study coming out of Quebec called the Spitzer report. It's a three-year report by an expert panel of clinicians, epidemiologists and basic scientists. Everyone's puzzled as to what the story is behind soft tissue injury and how best to resolve these problems. The idea of the Spitzer report was to ground all their recommendations in hard science. They started up with 10,000 papers in their literature review and narrowed it down to 1,200 related to soft tissue injuries. Only 294 were considered worthy of in-

depth consideration; only 62 of the 294 papers were considered scientifically sound.

Basically, I think we don't really know scientifically why people are in pain and we don't understand all the balance of factors in the blend. The small minority that is not getting well is responsible for the vast majority of costs. No one can say confidently that they have the answer to that, and every profession wears a different set of filters on their glasses. So massage therapists will identify among the chronic people those who are suffering from muscular tension difficulties, psychologists will identify a different group and so on. I'm sorry, there's no easy answer. I guess the only real answer to minimizing costs is to research further exactly what the effects of different therapies are and what the boundaries are between the different professions.

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Ms Fitch: Just a minor point in addition to that: In addition to the scientific quagmire or quandary that goes on around soft-tissue, I also believe there's a certain felt sense among certain of the insurance industry representatives that massage therapists and other health professions perhaps have driven up this cost exponentially because they are offering feel-good treatments, as we heard earlier this afternoon. If you knew some of my clients, they would not agree that these are feel-good treatments, that massage therapy, if you're working in a therapeutic way on an injury, is not always comfortable at the time of the treatment, but it is necessary to release some of the restrictions that are going on. I just wanted to make that point.

Mr Sampson: Thank you for your presentation. I can maybe direct my question to Mr Alexander, but Ms Fitch, you may want to respond. I gather from your brief that you are a member of a DAC team?

Mr Alexander: Yes.

Mr Sampson: You also provide treatment obviously.

Mr Alexander: Primarily I'm in private practice.

Mr Sampson: We've heard from some individuals, and we had a chiropractor in front of us yesterday saying, "Try to disengage the process of DAC assessment from the process of treatment, because if you don't do that you're not going to be able to deal with the word 'independent' or the concept of independence in the DAC assessment process." You clearly are doing both. How do you feel about that statement? Is there a way to bring true independence back, either perceived or otherwise?

Mr Alexander: I'm not sure. It's a very good question. In a large centre I don't think it needs to be as much of a problem. If you're going to have someone do an accurate independent assessment, they need to be a practitioner who works with the problem daily.

When I assess someone, I treat them as if I've seen them for the first time and I'm going to be treating them and you darned well figure out what's going on and what the balance of factors are that will best serve this person. If I'm not treating people daily or at least quite frequently along the whole scope of the recovery continuum, then how can I do an accurate assessment as to what's going on and what their prognosis is? It's impossible. You need to have practising people. You could shift them around

the province or something, so I'd go to Barrie to do DACs, but I don't know. Is that helpful?

Mr Sampson: I guess the dilemma is—

Mr Alexander: Oh, how can you be independent?

Mr Sampson: Right. If it's not physically possible to be independent, and I can understand how in some communities that's not possible because the volume of business isn't sufficient, how do we get at the independence issue?

Mr Alexander: There are guidelines which are supposed to ensure independence in that you haven't treated the person before, you're not related to them and so on. There's a number of these guidelines, and you can't be shopping for clients. In my experience the guidelines that are there are enough for my—

Mr Sampson: These are guidelines by your college?

Mr Alexander: No, these are DAC guidelines. In my experience, which is limited because I have only been doing DACs for about six months, it's quite sufficient for me. Ideally, the health care practitioners care most about the patient and not themselves, so if you don't have that, people are always going to subvert the system.

Mr Phillips: I'm not sure what your concern was. Is it that the people who currently under the provision are allowed to prepare the plans don't appreciate the role that the massage therapist can play?

Ms Fitch: The health professionals who can, under this proposed legislation, prepare treatment plans may not know anything about massage therapy, may have a confused view of what massage therapy can do or what its benefits are. As I understand this legislation, the way it reads a doctor would have to prepare a treatment plan recommending massage therapy, then the client takes that treatment plan to their massage therapist, the massage therapist prepares a treatment plan, goes back to the doctor, the doctor approves my treatment plan and then this goes to the claims adjuster who then says yea or nay over the whole thing.

In my opinion, this is not appropriate because if the physician has no idea what I'm basing my treatment plan on as a massage therapist, because they have no basic understanding of the therapy, then it strikes me that they should not be in a position to say yea or nay whether my client should get that kind of treatment. It puts the client in a position of almost begging their physician, chiropractor, physio or psychologist to support that request when, under the RHPA, that would not be the case.

Mr Alexander: I'd like to add to Pam's comment. The way I view it is, under the RHPA, we are considered primary contact practitioners so that the RHPA feels that we can meet people and assess their needs and decide in concert with them what course to pursue, which really puts us on the same footing as the chiropractors, the physiotherapists and so on.

Mr Phillips: My point, just to get your professional advice, is that I have a very simplistic view of it, I guess, which is that in the ideal world one person can see somebody and say, "Here is the best possible plan for you." If, however, the only way the system works is for every health profession to look at everybody, somehow or other, conceptually, I can't imagine all of this working. I understand how you feel about your profession, but it

seems to me you'd end up with 10 or 12 people having to look at every individual who comes to a DAC and then there's—I conceptually see a bit of a dog fight about what is the best treatment. Is there a simple solution to this simple dilemma I see?

Ms Fitch: The simple solution is to have us listed as one of the health professionals. I understand your point, that it seems everybody has access. If you consider a scenario where a client has had a motor vehicle accident, they're going to go to their physician, and if they see a chiropractor or a physio on a regular basis, they'll see one of those as well. But we also have clients who see us on a regular basis, who don't see a chiropractor, who don't see a physio, who see their physician maybe once a year for their physical, but we see them more often than anybody else. If that client ended up having an accident, they would have to go through quite a rigamarole to get a treatment plan and get massage therapy accepted.

The Vice-Chair: Ms Fitch, Mr Alexander, thank you very much for your presentation this afternoon.

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ASSOCIATION OF CERTIFIED FRAUD EXAMINERS

The Vice-Chair: The next delegation is the Association of Certified Fraud Examiners. Welcome.

Mr Ken Mitchell: My name is Ken Mitchell and I'm a member of the insurance fraud subcommittee of the Association of Certified Fraud Examiners.

For the first time, an auto insurance plan has recognized the impact of insurance fraud on insurance premiums. I have some specific thoughts that I can share with you to improve the anti-fraud provisions within this draft legislation, but I would also like to make some specific proposals to perhaps step it up a notch and make the fight against insurance fraud an articulated government policy.

In June 1990, the Ontario motorist protection plan was introduced by the government of the day as a response to soaring insurance premiums. Ontario's foray into no-fault was seen by some as a panacea for insurance woes. For those of us who specialized in the investigation of fraud, AMP was a Pandora's box which, once opened, would change forever the face of insurance fraud in the province. Those who cared to examine the fraud exposures in precedent plans in other jurisdictions warned the Ontario insurance industry, but we were seen to be alarmist or were seen to be dealing from self-interest. Today, staged motor vehicle accidents, multiple-claim fraud and income replacement fraud are commonplace, and are often the result of organized criminal activity.

To a fraud examiner, the acronym GONE is axiomatic. When Greed is presented with Opportunity and propelled by NEed, the victim's money is gone. OMPP and its successor program, Bill 164, were doomed to fail because they were premised upon the notion that people were basically honest and would deal with a statutory entitlement program honestly and in good faith. What these plans failed to recognize was that the greed of a minority of dishonest persons could rape and pillage a system in the absence of adequate anti-fraud safeguards.

Opportunity was created in the form of a rich, consumer-biased accident benefits schedule, further enriched under Bill 164, that encouraged insurers to pay rather than question. The requirement to pay quickly, without adequate time to investigate, the spectre of heavy fines, the heavy front-end cost of claim investigation, and the fear of government auto insurance encouraged insurers to rely upon the relative inelasticity of demand for auto insurance to allow them to pass fraud costs along to consumers. Hence soaring premiums.

Need was fuelled by the worst recession to hit Ontario in 60 years, followed by a jobless recovery that rendered many working Canadians obsolete and unemployable. Accident benefits became an income-replacement plan not for motor vehicle accident related injuries, but for displacement caused by worldwide economic restructuring.

In its 1993 report, the National Task Force on Insurance Fraud reported that up to 15% of insurance claims were fraudulent. Privately, members of this task force will admit that a cost measurement study done in 1993 developed a fraud profile almost 100% larger than the reported figures. The fraud figure privately talked about but publicly denied is very close to the 30% fraud rates reported in California.

It is axiomatic that every 1% reduction in insurance fraud losses should result in a corresponding 1% insurance premium relief. Ontario needs an anti-fraud program that will facilitate the investigation and prosecution of insurance fraud, bringing rate relief to consumers. An effective anti-fraud program must include an insurance fraud statute, a provincial fraud bureau, mandatory fraud programs, specific legislation and regulations governing evidence of fraud, and legislation governing insurance fraud investigators. I'll deal with each one separately.

Insurance fraud is illegal in Ontario. However, it is not defined as a specific crime and so it falls under the general fraud provisions of the Criminal Code of Canada. In theory, proper application of the Criminal Code should provide adequate remedy to society for insurance fraud, but in fact sentences handed down by courts often make a mockery of the time, effort and expense involved in investigating insurance fraud, and they don't reflect the societal costs of the crime.

In 36 of the US states, insurance fraud is defined as a specific crime, along with penalties that can be imposed. I would refer you to schedule A in my presentation that I have in front of you. The preamble to an Ontario fraud statute could articulate the serious effects of the crime and the economic damage that it wreaks on society. Sentencing guidelines incorporated in a statute could include minimum fines and jail sentences, giving the statute deterrent value and circumventing the slap-on-the-wrist sentences that are often handed down under Criminal Code prosecutions.

The Coalition Against Insurance Fraud in the United States has drafted a model fraud statute and I have inserted a copy of this into your presentation package.

Despite the magnitude of insurance fraud, the fear of potential legal consequences often causes the failure of insurers to aggressively pursue fraud investigations. Privacy laws, perceived duties of confidentiality and threats of lawsuits for defamation, invasion of privacy,

malicious prosecution, bad faith or interference with contract and business relationships and anti-competition liability, substantially retard the free flow of information that is necessary to stop insurance fraud in its tracks.

In the United States, a conditional privilege attaches to the "free flow of information to further a legitimate private or public interest." The condition on the privilege is that the publication not be abused. The underlying principle is expressed in the US case *Richmond v Southwire Co*, which states:

"The protection is based on a public policy that recognizes the need for the free communication of information to protect business and personal interests. To encourage open communications, it is necessary to afford protection from liability for information given in an appropriate effort to protect or advance the interests involved."

Simply put, the US decisions have recognized that there is a public interest in the abatement of crime and in the apprehension of crooks, and this takes precedence over a citizen's interest in suppressing communication related to law enforcement. What is further clear is that the public interest privilege applies even if the information flows to a non-public official. This is of paramount importance in a jurisdiction like Ontario where the preponderance of insurance fraud investigation is conducted by private individuals, including insurance adjusters, fraud examiners, private investigators and forensic accountants.

Insurers share not only the private interest inherent in the preservation of the integrity of the claims resolution process, but also the public interest in detecting and preventing criminal activities; ie, insurance claims fraud.

Many US jurisdictions have found that common-law privilege is inadequate to ensure the free flow of information and so they have enacted immunity statutes. Thirty-seven states have enacted some form of immunity legislation—and this is included in schedule A—facilitating the free flow of information among insurers, their servants, and police and government authorities. An immunity statute must be clear, concise and unequivocal to be effective. The model act adopted in many of the United States reads as follows:

"In the absence of actual malice, no person furnishing, disclosing or requesting information pursuant to an insurance claim shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information. No person providing information pursuant to an insurance claim shall be subject to civil liability for any cause of action arising from the person's provision of requested information. Any person against whom any action is brought who is found to be immune from liability under this section, shall be entitled to recover reasonable lawyer's fees and costs from the person or party who brought the action. This act does not abrogate or modify in any way any common-law or statutory privilege or immunity heretofore enjoyed by any person."

I've enumerated some of the safeguards that are requisite to an immunity legislation. I won't go into these at this time, but they're in my submission.

It's clear, however, that insurers relying upon the proposed immunity statute may do so with confidence if they seek and provide information in good faith, without malice and have adequately investigated to establish reasonable grounds to seek or provide such information. **1610**

Again, in many of the states they're taking a tough stance against fraud by creating fraud bureaus to investigate insurance fraud. These bureaus coordinate investigative efforts with various law enforcement agencies. Some of the bureaus are embodied within the Department of Insurance, the Attorney General's office, the Department of Labour, or they're established as an independent agency. Funding of state fraud bureaus may come from industry assessments, insurance premium surcharges, general revenues, civil or administrative fines, or a combination of any of these.

An Ontario fraud bureau could be incorporated within the Ontario Insurance Commission if its mandate was restricted to insurance fraud, or could be incorporated within the Attorney General's office if its mandate was expanded to include all statutory entitlement frauds, including workers' compensation, welfare and any frauds against the government of Ontario.

The function of a provincial fraud bureau would be to implement mandatory reporting protocols and to review, investigate and prosecute any fraudulent insurance act.

Mandatory reporting will require any insurer, agent or other person or employee having knowledge of or who believes that a fraudulent insurance act is being or has been committed to furnish the bureau a report of the information. Information so reported may be referred for prosecution or referred back for further investigation. What this will do is prevent insurers from expediently paying fraudulent claims and passing the cost along to the consumer.

The purpose of a provincial fraud bureau would not be to create another bureaucratized investigative agency but to create an authority for the expediting of prosecutions flowing from insurer-sponsored investigations. A provincial fraud bureau would be empowered to receive complaints and to commence prosecutions without the necessity to refer complaints to a local police authority. The Ontario insurance industry has developed the infrastructure internally and externally that is effective in identifying and investigating fraud. Insurers' anti-fraud initiatives are continually frustrated when compelling investigations are placed on the back burner by police agencies or by trial coordinators. It's difficult to fault the police; they have dwindling financial resources and these have to be carefully allocated. So-called soft crimes, including insurance fraud, are accepted by all as being of secondary importance to the violent and anti-social crimes, including murder, sexual assault and drunken driving. But conversely, it's difficult to ignore the complaints of insurers that costly investigations bear no fruit because of the lengthy delay in police investigations and in the court process.

A provincial fraud bureau can be an efficient and streamlined operation by seconding prosecutors from the Attorney General and investigators from the Insurance Crime Prevention Bureau and by utilizing the investiga-

tive resources provided by insurers. There is no need to duplicate effort and waste resources with concurrent police and private investigations. A very small auto insurance premium tax or an assessment on insurers, I believe, would be welcomed by insurers and policyholders alike, provided that the proceeds were clearly seen to be funding a department taking a proactive role in the investigation and prosecution of insurance fraud.

A provincial fraud bureau may be empowered to play a role in the regulatory process as well. Recognizing the fact that the cost of insurance fraud is borne by the consumer, many US jurisdictions require insurers to have minimum anti-fraud measures in place, and these are monitored by the state fraud bureau. These may include:

The requirement for insurers to have special investigation units or to have a contractual relationship with a third-party provider.

The establishment of either internal or industry-wide fraud hotlines actively promoted and used. These are used effectively in the United States and by ICBC in British Columbia. They work and they should be mandatory.

Industry-accepted standards for flagging and investigating suspect claims. One should have industry-wide standards. This eliminates systemic bias against suspect groups.

Internal fraud training.

Public fraud education.

Insurance premium stability was an enunciated objective of the draft legislation under consideration. A requirement that insurers make a determined effort to investigate and prosecute fraud should be a condition of future applications for insurance premium increases. A provincial fraud bureau could report to the OIC on licensed insurers' anti-fraud activities.

Now I'd like to deal with the anti-fraud provisions within the draft legislation as we see it.

Anti-fraud statutes work most effectively when the intent of the measures is made clear and when the standard of proof necessary to rely upon the statutes is clear and concise. Ambiguity in legislation often results in the application of the provisions in a manner inconsistent with the legislative intent. In so far as the anti-fraud measures incorporated into the draft legislation will be adjudicated at the Ontario Insurance Commission, imprecise drafting will undermine the effectiveness of the measures and the confidence of insurers relying upon them. There are three anti-fraud measures found within the draft legislation that I would like to comment upon.

Under subsection 33(2), which deals with the identification of an applicant for income replacement, non-earner and caregiver benefits, I would like to point out that it's far too easy in Ontario today—and it's sad to say that it's easy—to fabricate non-photographic identification. I think it should be made very clear, and within the legislation itself, that identification provided for these benefits should include photo identification.

Under the draft legislation, an applicant is required to advise the insurer of his address. I think the applicant should also be required to advise the insurer within five business days of a permanent or temporary change of address. This is required with a driver's licence; it's not a big deal for auto insurance benefits either.

In subsection 37(4), which deals with the delay in payment when an accident is not reported within 30 days, I can tell you from my experience that delayed reporting is a major red flag for insurance claim fraud. What delay does is allow tracks to be covered and investigative barriers to be put in place. The draft legislation allows an insurer to delay payment for 45 days. I think the insurer should be entitled to go to the Ontario Insurance Commission and obtain an extension of that 30 days when an investigation, a bona fide investigation, is in progress and more time is required to make an informed determination of entitlement.

Subsection 53(3) will be the most effective anti-fraud measure within the draft legislation. The only thing I would do here is suggest that an amendment be made which requires an insurer relying upon this section to provide to the Ontario Insurance Commission and to any party who will be making a recommendation to the commission, any and all of the information that they have in their possession which led them to suspend benefits under section 53(1), and the legislation should require the commission and any party giving a recommendation to the commission to receive and give adequate weight to this information. If we don't do this, we'll have the OIC and DACs looking at one set of information when insurers were relying on a second set of information, and we're not going to get a proper weight given to the information that the insurers relied upon.

Finally, I would deal very briefly with the issue of regulation of fraud investigators. Presently, there are a number of professions involved in the investigation of insurance fraud. These include insurance adjusters, fraud examiners, forensic accountants, private investigators, forensic engineers, accident reconstructionists and medical investigators. Each is governed under separate legislation. Of these, only insurance adjusters are governed under the Insurance Act and require specific insurance education and training. It may be the appropriate time to examine the governing legislation of all of these professions involved in the investigation of insurance fraud and to bring all under one licensing authority. Properly implemented, this could result in administrative cost savings and cost reduction via self-governance. Alternatively, minimum educational and professional development standards may be enacted for any person involved in insurance investigations. Clearly, insurance law is sufficiently complex, with four insurance regimes in play, that the public is entitled to the highest standards in the investigation of insurance fraud.

The Vice-Chair: On behalf of the standing committee, thank you, Mr Mitchell, for a very thorough presentation today. Have a good day. That will expire the time; I'm sorry we don't have any time for questions.

Mr Kormos: What about on consent, Chair? The witness has presented some interesting issues. Two or three minutes per caucus?

The Vice-Chair: The government side? Any comments on this side? I see all-party consent, so we'll go to two-minute questions per party.

1620

Mr Wettlaufer: Mr Mitchell, I'm particularly interested in what you said in so far as the number of people

being involved in doing fraud investigations, and that the only one licensed to do so or governed to do so are the insurance adjusters. I presume that you mean independent insurance adjusters, not company-trained or company employees.

Mr Mitchell: That's correct, because company employees are exempt from licensing under the Insurance Act.

Mr Wettlaufer: Given that scenario, have you seen a dramatic increase in fraud as a result of companies' efforts to cut administration costs in their claims and a transfer from claims handling by independent adjusters to claims handling by company adjusters?

Mr Mitchell: No. I don't see any increase that could be attributed to that kind of transfer of authority or responsibility.

We saw the early advent of fraud in 1990, 1991 and early 1992, when the full effects of OMPP came into play. What we had were insurers who, over a brief period of time, experienced higher profits than they anticipated. They were under extreme pressure because of the election of an NDP government that was about to bring in government auto insurance and what they found, from my perspective, was simply a willingness to pay claims and not adequately investigate.

What that allowed was organized insurance fraud to take root, and it has penetrated significant sectors to the point where we can now read about staged accident rings. I tell you, Mr Wettlaufer, I could bring in a flow chart of an investigation I worked on that would stretch from that wall to that wall, and I think it would go on a little bit farther, showing the linkages of staged accidents and the organization of the fraud that's involved. I take this directly back to the willingness of insurers to pay early on rather than investigate.

When OMPP was instituted I went to Michigan, which had a very similar insurance regimen, I studied what happened down there and I asked insurers down there, "What are your fraud exposures?" They told me a story of a particular group in Dearborn, Michigan, which had organized an insurance fraud school to the point where they had blackboards, they had books, they had courses in how to fake your independent medical examination and whiplash 101 and so on. This group was finally penetrated and broken by the FBI in 1986, but it had been in place since 1974. That's how long it took a concerted effort to penetrate and break an insurance fraud ring in that jurisdiction.

Insurers in Ontario were warned, but they preferred to ignore those warnings and to pay.

Ms Castrilli: It's certainly a bold presentation you've made here today. You state that OMPP introduced a Pandora's box. I wonder if you could tell me what fraud provisions were repealed by OMPP when it came in.

Mr Mitchell: I don't think there were any fraud provisions repealed. I think what happened was an attitude that took over, and what did come in with OMPP was very high fines. The insurance industry's very timid. If you wave a fine in front of them, they will cower and back off. I've recently asked people in the insurance industry about these huge fines that were instituted under OMPP—I believe they were \$100,000 fines for bad-faith negotiating and claim settlement and so on—and how

many people were actually ever fined and I was told zero. Nobody's ever fined, but the spectre of the fine caused a lot of these companies to turn tail and run from their fraud investigation responsibilities.

Ms Castrilli: I would have thought that since the industry has produced all kinds of statistics that have demonstrated that all measurable costs under OMPP went down—that is the cost of premiums, costs of accidents and so forth—there would have been less incentive for fraud. But I think I heard you say, and correct me if I'm wrong, in response to a question from Mr Wettlaufer that the fraud that actually occurred under OMPP was in anticipation of what might happen under Bill 164. I would take from that then that OMPP was working?

Mr Mitchell: No, no.

Ms Castrilli: You assume that there's a whole crew of people who organize—

Mr Mitchell: No. Please don't misunderstand.

Ms Castrilli: Well, I'd like you to be clear because it's confusing.

Mr Mitchell: Yes. Please don't misunderstand. Fraud was not caused because of OMPP and it wasn't caused by the spectre of government auto insurance. It was a result of the spectre of government auto insurance, which we had up until Bill 164 was enacted, that caused insurers to say, "We'd better be good little boys and we'd better not offend too many people in power, ie, the government of the day, or they'll take over our industry, so we're going to pay claims," and they paid claims and they paid through the nose and they turned a blind eye in many instances of fraud until it got to the point where they said: "Wait a minute. We're being" and my terms in my report were "raped and pillaged." All of a sudden, claim costs were going through the roof. The OIC was being faced with double-digit premium increase requests year after year.

Ms Castrilli: Do you have statistics you can show us?

The Vice-Chair: Thank you, Ms Castrilli. I'm sorry.

Ms Castrilli: I think this is an important point. Do you have statistics that you can show us about the increase during that period of time?

Mr Mitchell: Increase of?

Ms Castrilli: Fraud claims.

Mr Mitchell: There are no definitive studies. When I come to you and talk about fraud I can tell you that in 1990 there were no certified fraud examiners in Canada; now there are over 1,200. There were no chapters of the Association of Certified Fraud Examiners in Canada; now there are five in Canada. I can give you one specific example that could be replicated across the province.

The Vice-Chair: Mr Mitchell, do you have any specific statistics that you could present?

Mr Mitchell: These are numbers which could be in the form of statistics. What I was about to say was that in London, Ontario, about five years ago there would have been five private investigation agencies; now there are 20. So the numbers of those involved in fighting fraud are increasing.

Ms Castrilli: But you have no statistics.

The Vice-Chair: Thank you, Ms Castrilli. On to the third party; Mr Kormos.

Mr Kormos: Trust me, I remember well the very moment that public auto insurance was no longer a threat.

Mr Mitchell: I'll bet you do.

Mr Kormos: The joke didn't fit in the ministry lock any more. I hear what you're saying and I suspect—that is just suspicion and based on anecdotal stuff—that with the advent of no-faults, the higher the no-faults, beginning with OMPP, the more there is of at least no-fault fraud or at the very least the phenomenon that lawyers call "malingering." I know health care people don't like the usage of that word, but I can't recall the word they use. I think that's a given and it's quite logical. That was one of the fears about no-fault, because with tort recovery, of course, you had to go through the test of scrutiny, of discoveries and of its being an adversarial system.

No doubt the spectre of government auto insurance also produced significantly lower premiums. If you take a look at the data, the insurance company was quite clever in the response.

You've talked primarily, though, about "post-writing fraud," and again my suspicion—and you'd know more about this than I would—is that the fraud begins at the point of writing the policy. Granted that the vast majority of policies are written by brokers or direct sellers, the fact remains that brokers and direct sellers range from very good to quite frankly very sloppy or very bad. Policies are written over the phone. Policies are being written without ascertaining the true identity of the vehicle or of the insured.

With the entry of banks into this business, which are tending to do almost 1-800 selling of insurance, my suspicion is that having adequate fraud controls means starting at the very beginning, making sure that the person you're insuring is the person they claim to be, making sure that the vehicle you're insuring is the vehicle it's purported to be. That is the genesis of a fraud curve. Am I close on that point?

Mr Mitchell: Yes, and I would have to agree with you. I sponsored a fraud conference in Toronto back in November, and the response that I got to the questionnaire, and it was mostly insurance industry people who were at it, was that this is the kind of conference that should be put on for our brokers. I think the insurance industry recognizes that as well, whether they're admitting that publicly—they have admitted it to me. It's exactly what you say. I think if we go back to the kind of immunity legislation I'm talking about, something that would allow industry-wide databases and sharing of information so that an insurer could immediately know, through relational databases and accessing those by searching by name, by date of birth, whatever—

Mr Kormos: That's where ICBC has a leg up, because of course everything is on one database. That's why their fraud control has been particularly effective.

The Vice-Chair: Mr Mitchell, thank you for staying a little while longer with the committee. Have a good day.
1630

EDWARD PENDLEBURY

The Vice-Chair: Next is Mr Edward Pendlebury. Good afternoon.

Mr Edward Pendlebury: My concern really in this presentation is simply the so-called FARM, that is, the Facility Association residual market. I obtained my

driver's licence in 1952 with a test in Victoria and I've renewed my driving licence without a break. But, like almost all drivers, I was unaware that each at-fault accident in the last five years would count two points—that's where a person has four or more years of driving experience—and that with a total of four points there would be a mandatory transfer to the Facility Association residual market, or FARM.

On that sheet, I have given how my insurance premiums reflected my accident history. As you can see, in 1991 I had two claims, one for \$977.21 and another for \$3,137. I am not sure—I haven't checked with Campbell Motors, who did the repair—but I believe the one for \$3,137 is where my wife was apparently threatened by a truck on a road which was really under repair. She pulled over a bit to the right, and there was a drop of two or three inches immediately after the asphalt. So, with the car out of control, she headed for the ditch. All the apparent damage was that we lost the front licence plate, but examination on a lift showed that there was more damage, and that's why that one is high.

The third accident was reported in 1993. You will see how I have been moved to the FARM. I have been advised by my broker that my 1997 premium is the first that I can expect to be free of the FARM and have selection on the market, with only two points registered against me.

Another application of the FARM which is not generally known to motorists, also with a four-point application, is when the applicant has no evidence of a valid automobile insurance policy for at least 12 months out of the last 24. Although she has driven for the last eight years, my friend Kim McEwan has fallen into this trap and is faced with insurance costing from \$3,000 to \$4,000 per annum. This is one of the cases where people are unaware of some of the dangers that are listed on the second sheet, the insurance risk point chart, which gives the number of points you can lose and where you are on the FARM for at least four to five years at high rates of premiums.

That's all I have to say. Thank you.

Mr Crozier: Thank you, sir. I wish each of the presentations was as brief and concise as this one. I gather, although I'd like you to clarify for me, that you're not disputing whether a person should or should not be in the Facility. You're just saying that when you don't know it, it causes some difficulty down the road.

Mr Pendlebury: In part, yes, that is quite correct. There are a number of things on that. You take like recently in the newspaper, Mr Brown in his column drew attention to the fact that you can fall into this trap very easily. In other words, you may have two points that you've lost on an accident. If you are caught speeding, you lose I'm not sure whether it's one point or two. There are a number which are covered in the traffic act, and the result is that you can suddenly find yourself in a bind where you thought it was cheaper or quicker to pay your fine, rather than to go to court to have them decide as to whether the facts presented by the policeman are in accordance with what you understood.

Mr Crozier: Well, that certainly might be the case.

Mr Pendlebury: I think everybody is aware that it is only sensible that if you are accident prone, you should

be liable to higher premiums. But one of the catches on this one is the fact that if it takes you at least five years, and you take like in my case one of the things I have discovered is that when it comes to speeding, we have a problem here in Ottawa that certain areas have a 40-kilometre speed limit regardless. The general one is you have this speed imposed unless it is posted contrarywise. You have the same thing in Ottawa. There, it is normally 50 kilometres. On the other hand, I'll defy anybody to go down a number of these streets and find people who are travelling on major roads at the posted speed.

This is one of those that will affect everybody's premiums. This afternoon, when I was going down the parkway, I noticed the RCMP, two of them, one sitting watching one lane and one the other. Normally, everybody on a road which is designed for 50 miles an hour is likely travelling maybe 40, 45. On the other hand, again they run the risk of losing points for their insurance. It's somewhat sensible and, in other words, it can be a nuisance.

Ms Castrilli: Thank you very much, Mr Pendlebury, for being here. You've done a great job of putting down the figures for us. It strikes me, if we do a calculation of the math involved, that you had roughly about \$4,000 worth of claims that were paid to you, a little more or less, and that's basically it. For that, you will be in Facility for five years. That's by your calculation.

Mr Pendlebury: That's the minimum, yes.

Ms Castrilli: Right. You're looking at somewhere in the neighbourhood of \$2,500 on average for each of those years. I guess what's really happened is, by making a claim, you've asked for a loan from the insurance company, in a way, which you were paying back with interest, a big, hefty interest, over five years. Had you paid it yourself without resorting to making a claim, you wouldn't have subject to that. Does that analysis ring true with you?

Mr Pendlebury: Let's go back and put it the other way. You are saying that after my accidents, or claims, they paid it and paid it up front and I am repaying it.

1640

Ms Castrilli: Right, with a big, hefty premium.

Mr Pendlebury: On the other hand, let's put it this way: If you go back to 1952, how much have I paid in with a minimum of accidents, in other words, where I have prepaid for some things? That's the other side.

All I'm trying to do here is point out that we have something which has been imposed in the last four or five years and which should be considered, and that's it.

Ms Castrilli: You made your point very clear.

Mr Silipo: I don't really have a question, Mr Pendlebury, but I just wanted to say that I think the point that you've made we've heard from other presenters here in Ottawa and I know throughout the rest of the hearings, and I think what we've heard continuously in these kinds of situations is the need to fix this problem. Many people, and I think you're saying the same thing, are not arguing against the need for a Facility system, or even the sense of having people pay more when they're involved in accidents. At the same time, there's a combination of problems that range from people not knowing clearly what the rules are and getting caught with these huge

increases, not taking into account the good driving record that they've had for many years back, and all of a sudden, because of a couple of accidents, although those are our accidents, it sort of changes a situation for somebody for the next five years at least.

Mr Pendlebury: I think Dave Brown brought out something again in his column which is applicable, and that is on that last one I had where if you dispose of a car, and assuming you only have one car per family, but if you dispose of your car and don't have one for two or three years, when you buy another car, then automatically you are into this particular pitch. That I think is the unfair one.

Interjection.

The Vice-Chair: Did you want equal time, Mr Kormos?

Mr Kormos: The balance of our time, yes, sir. Mr Pendlebury, yours is not an uncommon complaint. It speaks to the fact that, firstly, when is insurance coverage not insurance coverage? Ever since Bill 68 and no-fault, you might as well not have insurance coverage, because at the end of the day you're going to pay and pay and pay. You'd have been better off to have been self-insured and covered your own losses, because you've paid for them manifold.

Secondly, you've been driving for 43 years, give or take a few months. That means you're over 28; I'm confident of that. I simply speak to these committee members once again of a system like ICBC, the Insurance Corp of British Columbia, that affords seniors automatic and significant discounts, recognizing the reduced income of seniors and recognizing that seniors as a class are by and far safer drivers, in view of, among other things, their experience.

Mr Pendlebury: There is one thing I would point out, and that is in 1952, when I took my exam in British Columbia, at that time if you were over I think 65, you took an examination. At 70 and over, I think you had an examination every year. That would mean that in British Columbia in particular there would be the check on seniors that they were safe drivers.

Mr Kormos: Thank you, sir. Hope you belong to CFAIR.

Mr Pendlebury: No.

Mr Kormos: Please consider joining it.

Mr Pendlebury: I will.

Mr Wettlaufer: Thank you, Mr Pendlebury, for appearing. I would like to go back to something that Monte Kwinter of the Liberals asked another gentleman, a senior, last week. He asked what the person considered to be a fair premium. In 1991, you paid \$730 premium. Did you consider that fair at the time?

Mr Pendlebury: At that time, I think somewhere in the \$600, \$700 range was very common.

Mr Wettlaufer: Okay. That was based on—

Mr Pendlebury: Presumably their experience.

Mr Wettlaufer: Yes, and the fact that you were a good driver.

Mr Pendlebury: I think so.

Mr Wettlaufer: And you considered that a reasonably fair premium at that time.

Mr Pendlebury: At that time. Mind you, my data do not go back to what the premium would be in shall we say 1972, 1973, 1974, before inflation had really taken place.

Mr Wettlaufer: Probably about \$300.

Mr Pendlebury: Possibly.

Mr Wettlaufer: But that's a guess. The thing that I'm getting to is that insurance companies assess risk. That is how premiums are developed. It's based on an assessment of risk. They would have considered you less of a good driver in 1993 as a result of three accidents in a three-year period than they did prior to 1991.

Mr Pendlebury: Certainly. Yes.

Mr Wettlaufer: As a purchaser of insurance, we are asking insurance companies to put up, or risk, \$500,000 or \$1 million, or whatever figure, based on our ability to drive a vehicle based on their assessment of us.

Mr Pendlebury: That's right. That's including, I take it, personal liability.

Mr Wettlaufer: That's correct. Now, when they assess us as being less of a good driver, then of course the premiums rise and—

Mr Pendlebury: Yes, but did you notice that in that there is no—well, when it comes to an accident—pardon me. When you're buying insurance, there are a number of premiums, subpremiums, shall we say. In my case, there was no claim for any loss of income, because I'm retired. There was no claim for medical, on that part of it. There was no claim for any third-party liability.

Mr Wettlaufer: I agree, but what I'm trying to get at is I've often heard people say, when they back into another vehicle or they back over somebody's lawnmower or whatever, they say: "But it wasn't much of anything. There wasn't much damage." I always think, "But what if that had been a child?" There's a very slender line between a minor claim and a major claim, and this is what insurance companies do in assessing risk. It's not the amount of claim, it's the what ifs.

Mr Pendlebury: That is quite correct. But if you go into a mall, take a look at the pedestrians who walk along behind cars and don't pay one bit of attention to whether you've got a backup light showing.

Mr Wettlaufer: I agree.

Mr Pendlebury: That is one of those where I am now in the habit of giving a little honk on my horn before I back out. I often try to back into the slot. So that would cover that point.

The Vice-Chair: Mr Pendlebury, thank you very much for your very candid interview today.

Mr Kormos: Mr Wettlaufer, he sounds like an outstandingly good driver, in view of what he just told us. Why shouldn't he be paying lower premiums? What gives here?

Interjection.

The Vice-Chair: Seeing no more business before the committee, we will be standing adjourned and resuming at 9 am tomorrow morning in London, Ontario.

The committee adjourned at 1652.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Crozier, Bruce (Essex South / -Sud L) for Mr Kwinter

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

Also taking part / Autres participants et participantes:

Kormos, Peter (Welland-Thorold ND)

Clerk / Greffier: Franco Carrozza

Staff / Personnel: Andrew McNaught, research officer, Legislative Research Service

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Standing committee on finance and economic affairs (36th Parl., 1st Sess.)

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Thursday 29 February 1996

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Head Injury Association of London

Jane Gillett, board member

Rainbow Rehabilitation Centres, Ontario

Nancy Dool-Kontio, intake coordinator

Emilie Newell, doctor of physical medicine and rehabilitation

Ontario West Insurance Brokers; May-McConville Insurance Brokers

Bill Boland

Peter McConville

Thomas Schinbein

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Charlie Vanveen

Middlesex Insurance Brokers Association

Dan Danyluk, territory director

Michael Carberry, president, Insurance Brokers Association of Ontario

Bob Carter, executive director, IBAO

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Jim Hoare, partner

Gail Delaney

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Steve Fletcher, executive director

Nigel Gilby

London and Area Massage Therapists Association

Donica Abbinett, member

Melanie Purres, member

Zara Kimball; Morris Karmazyn

Brantford and District Head Injury Association

Lawrence Palk, director

Joanne Buchanan

Dale Head Injury Services

Deborah Delorme, executive director

Craig Brown

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Chair / Président: Chudleigh, Ted (Halton North / -Nord PC)

Vice-Chair / Vice-Président: Hudak, Tim (Niagara South / -Sud PC)

*Arnott, Ted (Wellington PC)

*Brown, Jim (Scarborough West / -Ouest PC)

*Castrilli, Annamarie (Downsview L)

*Chudleigh, Ted (Halton North / -Nord PC)

*Ford, Douglas B. (Etobicoke-Humber PC)

*Hudak, Tim (Niagara South / -Sud PC)

Kwinter, Monte (Wilson Heights L)

Lankin, Frances (Beaches-Woodbine ND)

Martiniuk, Gerry (Cambridge PC)

*Phillips, Gerry (Scarborough-Agincourt L)

*Sampson, Rob (Mississauga West / -Ouest PC)

Silipo, Tony (Dovercourt ND)

Spina, Joseph (Brampton North / -Nord PC)

*Wettlaufer, Wayne (Kitchener PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Crozier, Bruce (Essex South / -Sud L) for Mr Kwinter

Kormos, Peter (Welland-Thorold ND) for Ms Lankin

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

Wood, Bob (London South / -Sud PC) for Mr Spina

Clerk / Greffier: Franco Carrozza

Staff / Personnel: Andrew McNaught, research officer, Legislative Research Service

The committee met at 0900 in Spencer Hall, London.

AUTO INSURANCE

ONTARIO MUTUAL INSURANCE ASSOCIATION

The Chair (Mr Ted Chudleigh): We will call the meeting to order, having all arrived at our appointed places. Welcome to London. We have with us, to start the day, the Ontario Mutual Insurance Association, Mr Johnson, Mr Wettlaufer and Mr Perry. Welcome, gentlemen. We have 20 minutes to spend together. If you would like to present us with your brief, we can perhaps leave some time at the end for questions. Please identify yourself for Hansard, just so they know which voice is which.

Mr Glen Johnson: Yes, I'm Glen Johnson, president of the Ontario Mutual Insurance Association.

Mr Ron Wettlaufer: Ron Wettlaufer. I chair the auto committee for the Ontario Mutual Insurance Association.

Mr Ron Perry: Ron Perry. I'm manager of the Lambton Mutual.

Mr Johnson: First, we'd like to speak a little about who our organization is. I'll quickly go through the first three pages so we can get to our comments on the proposal and leave some time for questions.

The Ontario Mutual Assurance Association is comprised of the 51 purely mutual farm mutuals in Ontario. All policies are participating policies. The companies are guided by boards of directors, typically farmers or small business operators from the community. We're in all lines of property and casualty insurance. Our companies are anywhere from less than \$1 million in assets to over \$60 million in assets. It's a very financially stable organization; we're currently carrying about \$1.50 in surplus for every dollar of premium written. Size-wise, we're about 18th for Ontario automobile insurance. We have our own guarantee fund which stands behind all the companies. We own our own reinsurance company, which I believe is the first wholly Canadian-owned reinsurance company. The point is that we're a purely Canadian and a purely Ontario organization.

Our goals: The farm mutuals are unique within the Ontario insurance industry in that we're purely mutual. There are no profits diverted outside of the system. As such, our goals with respect to automobile insurance are to provide a system which results in adequate, sensible coverage and stable pricing; will not be overly complex to administer and thereby place upward pressure on administrative expenses; will not lend itself to fraud and other abuse; reduces uncertainty so that the premiums we must charge our policyholders are as close as possible to the right premium; and keeps our farm mutuals financially stable.

You have a list of all of the farm mutuals in Ontario. Many are in this area. I'll now pass it over to Ron Wettlaufer to give our comments on the proposal.

Mr Ron Wettlaufer: Mr Chairman, members of the committee, our comments on the government's proposal are as follows.

In regard to the fundamental structure, we have reviewed the government's proposal and are generally supportive of the goals. The package contains many good ideas. However, we also stress that we are very conscious of the fact that if this proposal is implemented, we will be administering the fourth auto insurance system since 1990.

We must stress that we hope the government will implement a system that will be acceptable to the majority of consumers. There is no doubt that consumer satisfaction is a function of price more than any other factor, including the extent of coverage. Price stability must be a prerequisite.

It is essential that consumers be made more aware of the fact that the price of automobile insurance is a function of claims costs more than any other single item. It must be clear to them that broader first-party benefits mean higher premiums; increased access to tort means higher premiums; more complexities of administration and claims handling means higher premiums; more opportunities for fraud and other abuses mean higher premiums.

In order to control price, coverage cannot be overly generous. Administration needs to be as efficient as possible. In our opinion, insurers need to be empowered to control abuses--which the consumers ultimately pay for.

Whether or not the proposed system stands the test of time will be determined by consumers. All auto insurance consumers pay premiums. Only a small percentage have losses. The unrest with respect to auto insurance over the past 10 years has been driven by price and availability issues, not by dissatisfaction with adequacy of benefits. We believe that the test of the proposed system will lie more

with its effect on price and availability than with the extent of coverage provided. We strongly believe that a good basic coverage needs to exist; however, we cannot lose sight of the fact that broader coverage means higher prices.

The question then is whether the proposed new system will adequately control claims costs enough to satisfy the public's expectations with respect to price and availability.

We have not conducted an extensive actuarial analysis of the new product. However, we have analysed the features of the government's proposal and will comment on whether these changes should have a positive or negative effect on price.

We would like to express support for replacing the Bill 164 system with the type of system that has been proposed. The fact that the Bill 164 system seemed to create an attitude of entitlement as opposed to indemnity is a key fundamental flaw that has made it difficult to control claims costs and hence prices. The actuarial data available thus far indicate that these trends would continue.

Once the new plan is implemented, we will have open claims on four systems since 1990. However, whatever system is decided upon, it is important that the fundamental structure will allow adjustments to be made without another complete overhaul. Actuaries can price complex insurance products like auto insurance based on assumptions and mathematical formulas, but no one really knows what the eventual cost will be until the system has been in place for a number of years. It is important that the framework of the new system be sound and that the system be structured such that adjustments can be made to the various components within the framework to fine-tune pricing as the experience develops.

The proposals with respect to greater access to tort have the greatest potential for placing upward pressure on prices. We see a need for some strengthening here and offer the following recommendations.

(1) The concept of allowing innocent parties to sue for economic loss is sound, but adequate controls must be placed if we intend to control claims costs and hence prices. Based on the numbers released thus far, it may be necessary to extend the threshold to economic loss claims in tort to achieve the price expectations of consumers. A threshold could be structured such that adjustments could be made as a mechanism of fine-tuning the system.

(2) Tort access for non-economic losses is a fundamental requirement for certain types of claims. We agree with the concept of a verbal threshold and deductible. Again these are components which could be adjusted once the claims experience is known as a mechanism for fine-tuning claims costs and hence prices. We believe it is generally acceptable to the public to have this type of structure as a mechanisms for controlling insurance costs. We also believe that a stricter threshold and/or a higher deductible would be equally as acceptable if the public understood it was necessary in controlling costs.

(3) We've heard the debates with respect to whether words like "permanent and physical in nature" need to be added to the threshold. If you felt this was too restrictive or unnecessary to begin with, decisions in that regard could be made down the road. Again, we emphasize that the most fundamentally important decision that needs to be made now is with respect to the framework of a new system.

(4) Contingency fees should not be permitted for auto insurance claims. Allowing greater access to tort plus allowing personal injury victims and lawyers to enter into contingency arrangements will certainly put upward pressure on prices. If contingency fees are allowed, they should be subject to tight controls or special restrictions for automobile personal injury cases.

0910

It would appear that the general nature of the proposed no-fault benefits are reasonable. There have been a number of changes recommended which would address our concerns with the current system related to complexity: the entitlement issue; pay-now, dispute-later concepts; and potential abuses. These changes will all have a positive effect on claims costs and price.

We offer the following recommendations:

If an insured is not earning an income, he or she should not expect a loss-of-income benefit. We recommend that the no-fault coverage not include any benefits for individuals who are not suffering a loss of income. Consumers will understand and accept this.

Students should not be entitled to the \$185 weekly non-earner benefit if 85% of their net income was lower than this amount. Again, consumers would not expect this and there is no need to add any additional cost or complexity to the system.

Include case management type expenses within the insured's limit for no-fault rehabilitation and medical benefits. This will give the insured a vested interest in controlling those costs.

Only offer optional benefits on the major areas such as income replacement, medical-rehabilitation-attendant care and death benefits. The concept of optional benefits in these areas is sound. If too many options are offered in other areas, it will add to the complexity and confusion for consumers and the errors and omissions exposure for brokers.

Visitor expenses need to be tightened. They could be limited to catastrophic injuries only and restricted to only immediate family members living in the same residence.

Housekeeping and home maintenance expenses should be restricted to the catastrophically injured only.

The accident benefits exclusions should not require that the offending party be convicted. In cases involving operation of the vehicle while impaired or with over 80 mg of blood-alcohol content, insurers should have the opportunity to pursue the exclusion if, for one reason or another, a charge is not laid or a conviction pursued but where evidence exists that the policy was violated. Insurers should not be restricted from pursuing their rights under the contract. Costs of excluded claims should not be a burden on the new auto system.

Individuals who operate uninsured vehicles or who are occupants of vehicles which they know to be uninsured should also be excluded from income replacement benefits.

Generally, accident benefits reimbursements should be limited to meaningful items; for example, there should be a 50-kilometre per trip deductible on travel expenses, and family members should not be paid for tasks that they would normally perform gratuitously, such as grass cutting or babysitting.

We are in agreement with the move towards more empowerment of insurers to control accident benefit claims costs. We believe this is fundamental to controlling costs. Insurers must have the ability to discontinue payment to ineligible insureds. We recognize that insureds must also have recourse where they are treated unfairly. However, we believe the concept of "Pay now and dispute later" will only drive prices upward.

As we have already said, consumers ultimately pay for the cost of regulation of our industry. We are generally in agreement with the government's proposal to streamline this process and reduce these costs as much as possible.

However, we wish to emphasize that Ontario's farm mutuals are provincially registered companies which only do business in Ontario; in fact, most confine their area to a very small number of counties. We are opposed to any shift of regulation of provincially registered companies to federal authorities. We are receptive to entertaining concepts of self-regulation, and in fact in 1994 we implemented a solvency protection process in the interest of protecting the fire mutuals guarantee fund. This mechanism was implemented with the support of the insurance commissioner. Although this process is in its early stages, we are extremely pleased with its results.

The farm mutuals have continually maintained a good working relationship with our regulators, from the days of the department of insurance when it was a branch of the Ministry of Consumer and Commercial Relations, through the advent of the Ontario Insurance Commission which came with Bill 68, and the Ontario motorist protection plan. We have maintained a working relationship with the commission and

have found them to be accessible and helpful to us. We would not want to look to Ottawa as our regulator.

Further, in the interest of streamlining the regulatory process, we believe that mediators should be empowered to a greater degree. Specifically, rather than add another layer to the dispute resolution process through a neutral evaluation, we believe the mediator should be empowered to give an opinion with respect to the probable outcome of a proceeding in court or arbitration.

With respect to other issues related to the proposal, we offer the following recommendations:

The recovery of health care costs will be funded by consumers whether they are continued in the cost of automobile insurance or contained within taxes or some other type of levy. Adding health care cost recovery to the auto insurance system will force premiums upward. Although the details of the mechanism have not been released, we assume the intention is to charge automobile insurers a percentage of their premiums. We recommend that a better method would be to charge a per-vehicle levy which would be connected to the annual vehicle registration fee. All vehicles must be insured. Therefore, it makes sense to share the health care recovery cost among all vehicle owners.

We also believe that offences under the Compulsory Automobile Insurance Act should be moved within or at least cross-referenced with the Highway Traffic Act such that demerit points are given for these offences and records are available through the Ministry of Transportation. We applaud the proposed increase of fines for driving without insurance.

In conclusion, we generally support the direction which has been taken. Most of the proposals will have a positive effect on the price and availability issues. However, based on the actuarial data available thus far, it appears it will be necessary to institute further refinements to achieve the level of price stability that consumers expect. We stress that:

Price and availability issues will be foremost in driving consumer attitudes about automobile insurance and ultimately determine the fate of the new system.

Consumers must be made aware that claims costs drive prices and that stricter controls on claims will have a positive effect on prices.

The new system must consist of a sound framework and enough flexibility to allow for the adjustment of its components to control claims costs or broaden benefits as experience develops.

We urge that you move forward without delay, and we thank you for the opportunity to present our views.

Mr Bruce Crozier (Essex South): Thank you, gentlemen. You've given one of the more complete and reasoned presentations we've had, and I compliment you. The fact that you've mentioned price numerous times throughout this presentation indicates to us that you know exactly why we're here. I wish we could discuss more of your points, but I would like you to elaborate briefly on the extended threshold to economic loss that you suggest.

Mr Johnson: Basically, we're just saying that if that's what it takes to control the prices, we think the public will accept it. Price is the driver of the discontent. We haven't priced out that option, but we think the public would agree, if that's what would control the price.

Mr Crozier: To a verbal threshold, similar to Bill 68, something like that?

Mr Johnson: Yes. That's what we're thinking of.

Mr Peter Kormos (Welland-Thorold): I suppose after this many years and this many kicks at the can, a minute is considered by some to be too much time. I consider it to be too little. I've got to tell you, it's been a great experience for me, after the 68 wars and the 164 wars and now the no-name bill inquiries, to be seeing all these same folks over and over and over again.

One of the things that's bothersome is that the industry has not come to this committee with the same vigour and enthusiasm with which it came to the committee during 68, somewhat diminished with 164, and now here we are again. This is the third successive government that's going to try to grapple with premium increases. Quite frankly, in view of the failure of the previous two governments, I can't think of any good reasons and there's nothing in this bill.

The problem is that Zurich doesn't agree with the IBC. The big players dominate the submissions in terms of tort, no tort, no-fault and what type of blend. My concern is that the industry doesn't really have a handle on what generates premium increases, what creates stability. IBC of course endorses tort, Zurich says, "No, it's no-fault." I of course disagree with both of them, simply because that's my nature and because Osborne and the OAIB, among others, have indicated that no-fault doesn't decrease increases, simply provides one-time savings.

0920

The Chair: Do you have a question, Mr Kormos?

Mr Kormos: Yes, sir, of course I do. The problem here is, why is there such disagreement within the industry? You know that I feel you've got to have some higher regard for the farm mutuals than you do for the bottom feeders like the direct sellers and so on. The farm mutuals come from the community. Why is it that the industry itself doesn't have consensus or agreement as to what constitutes a scheme that provides control over premium increases and provides stability? What gives here? How can there be such divergent opinion among the big players themselves?

Mr Johnson: It's not a case of tort or no-fault, it's a case of what's the balance between the two, and I think that's where the disagreement comes. Probably the centre of the disagreement is more with respect to how much tort you allow into the system and how much that will drive prices upward. I can't really answer your question on why the industry isn't of one mind except that there are 200 companies in the industry, but I think we all agree we need to stabilize prices.

Mr Perry: There is also an important aspect in our presentation, that we're talking about the framework of a system. You're right, we've gone through all sorts of systems. You've seen us, and we're talking to you, it seems like, every two or three years. As we said, we are aware that this is now going to be the fourth system in the last four to five years coming in. It makes it rough on us, it makes it rough on the consumers, and it's not doing anything good out there to have these systems revolving. We're trying to make a key point here: Let's get a framework set up that we can work with and adjust as we see time go along. The problem has been that we've had so many systems and none of them lasts very long, and nobody can get a handle on the effects of those systems before we're going into something completely else again. Let's try to get something in there that's a framework, that we can monitor as it goes along and will adapt to change.

Mr Wayne Wettlaufer (Kitchener): Gentlemen, thank you for coming today. You talk about it being the fourth auto system in six years. I was in the insurance business for 33 years. I agree it's the fourth system; however, there have been many, many changes. It's a constantly evolving product.

You talk about broader coverage equalling higher prices, increasing costs equalling higher prices, increased tort equalling higher prices, more complexities equalling higher prices, fraud equalling higher prices, increased claims equalling higher prices. The problem I have with this is that the insurance industry has not done enough, in my opinion, to educate the consumer on what equals higher prices, and this could be the source of the discontent. I'm going to depart from that criticism now.

During the past two weeks, we've heard a number of complaints about the deductible and what it does to the innocent victim vis-à-vis that it not only eliminates the \$15,000 claim but could also perhaps eliminate up to the \$30,000 claim. We had an interesting submission this week in Sault Ste Marie. It's one with which the insurance industry is not unfamiliar; that is, the waiver of deductible, that it reaches a certain threshold, perhaps \$15,000, and the deductible would be waived. What would you think about that?

Mr Johnson: I think the answer would be in what it did to the price. It might be a good idea, but you'd have to take a look at its effect. Frankly, we haven't discussed that prospect thus far.

Mr Perry: As we were saying here very strongly, we're trying to control price. We feel that one way of controlling price is to have insurance available for the serious type of loss, not the minor types of things, if we're going to make this product affordable. A thought quickly comes to mind that if you have a disappearing deductible, how is that going to be seen in the system? Will the claims be elevated such that the deductible then will disappear?

The Chair: Thank you. We appreciate the Ontario Mutual Insurance Association making its presentation.

DEBORAH MacPHERSON

The Chair: We now welcome Deborah MacPherson to the standing committee.

Ms Deborah MacPherson: I'm here, not representing any group or anything, but I was in a car accident on June 30, 1990, about one week after the no-fault law was put in. Basically, I'm just here to tell you about how difficult it's been under the no-fault law.

The most important thing I find is that I've had to prove myself over and over and over again to many people. It's been very costly as well as time-consuming, because I'm paying my lawyer for three hearings or more instead of just one. Like I said, I just have to keep proving to doctors. It's been proved of my injuries.

I've been through three hearings. My case is in court right now, so I ought to be careful with what I say. I feel like I'm straddling both systems, one foot in one system and one foot in the other, and it's very difficult on an individual in my situation. I feel I'm not the victim; I'm being treated more like a criminal, I guess would be a way to put it. I was a passenger in a car for the accident, so it's not even an issue of whether I was part of the cause.

With the tort system, the biggest thing is you can sue once and get it over with. I think that's very important for victims who do have real injuries, who have to keep proving it over and over. I feel like the law right now is more a new-fault rather than a no-fault, and that's simply because you keep having to prove it to new people over and over again. I just think it's ridiculous to keep doing that.

I don't know what else to say other than if I could get questions, I could answer what it's like.

Mr Kormos: I wonder if the Chair might make inquiries without using up caucuses' times and ascertain when the accident happened so we know which legislation it's under.

The Chair: You gave the date of your accident.

Ms MacPherson: Yes, June 30, 1990. I think it's one week after the no-fault was put in.

Mr Kormos: So Bill 68. And whether the litigation is about the no-fault or trying to pass the threshold.

Ms MacPherson: I have to pass the threshold to sue.

Mr Kormos: Thank you. That makes it easier.

You're one of, I believe, not just tens of thousands but probably into the six digits in this province. Be it Bill 68, OMPP, or be it Bill 164, which was the son of OMPP--it was like the sequel to one of those Friday the 13th kind of movies, because it's just as horrible because of its reliance upon no-fault--or be it this bill, at the end of the day, you've got to fight insurance companies.

Ms MacPherson: Exactly.

Mr Kormos: They've got deep pockets, they've got lawyers coming out of their yin-yang, and you are in a position where you've got to retain counsel to fight them. It would be nice if you could do it without hiring a lawyer, huh?

Ms MacPherson: It would be cheaper.

Mr Kormos: But you're not about to go there and face all those middle-aged, blue-suited, pin-striped guys and gals on your own. That would be nuts, wouldn't it?

Ms MacPherson: Right.

Mr Kormos: What about the no-fault? You were entitled to no-fault coverage under the OMPP, which is Bill 68, for a limited period of time.

Ms MacPherson: The no-fault benefits?

Mr Kormos: Yes. Did you have trouble getting those?

Ms MacPherson: No. I had them for a time and then they were taken away. I had to go to arbitration, I got them back, and they were taken away again. Whenever the insurance feels like stopping it, they stop it.

Mr Kormos: Again, they're playing the odds, because they know that if they simply terminate the no-fault, only a certain percentage of people are going to have the wherewithal to get legal advice. Most are simply going to say: "Oh, I don't get any more? Fine, I'll just live with the pain."

0930

We've had insurers come in here and criticize what they call feel-good treatment, and I suspect they're talking about some of the kinds of therapy that similarly occupational therapists and massage therapists have come here and talked about, but the insurance company dismisses that and says: "Oh, this is just feel-good treatment. These people are being scammed by the respective health care or quasi-health care therapists." Have you had experience with that, too?

Ms MacPherson: Yes. I've had a lot of therapy. The biggest problem with the insurance companies is, first two years after my accident, I received benefits. When they stopped, I fought my own insurance company for three years. I didn't even fight the people that caused the accident; that's what I'm doing right now. We called my insurance company the day of or the night of the accident and they said they'd take care of me. If I didn't have a lawyer, I'd be so screwed right now it wouldn't be funny. I had to fight them. All the arbitrations I went to were fighting them.

Mr Kormos: Your own company?

Ms MacPherson: My own insurance company.

Mr Kormos: The one you've been paying the premiums to.

Ms MacPherson: Exactly.

Mr Kormos: The ones that you thought were on your side.

Ms MacPherson: Yes. I hadn't even started fighting the other people till two weeks ago, and I'm in court now.

Mr Kormos: Because, you see, these people who are fans of so-called no-fault, that's what they tell you. They told us that back in Bill 68, they told us that during 164. They said, "Heck, it's a better system because it's not adversarial, because it's your own insurer," and why would they want to screw their own

client?

Ms MacPherson: They do.

Mr Kormos: Of course.

Ms MacPherson: If I didn't have a lawyer--you wouldn't know what to do.

Mr Kormos: Because Mother Teresa hasn't all of a sudden gotten a position on the board of directors of any of the auto insurance companies in Ontario.

Ms MacPherson: Right.

Mr Kormos: They always have had, always will have short arms and deep pockets, and profits mean charging the most amount of premiums and paying out the least amount of benefits.

Ms MacPherson: Yes.

Mr Kormos: How about the legal fees? How's your lawyer handling that, without getting into numbers or naming lawyers, because I suspect you wouldn't want to divulge that publicly right now.

Ms MacPherson: I pay for some of it and some of it's being paid by the insurer, but I'm paying for a lot of it, too.

Mr Kormos: So you're out of pocket and still no end in sight.

Ms MacPherson: I'm no further ahead or behind than I would be under the old law, except I'm behind financially because I've had to pay for more than one hearing.

Mr Kormos: So the insurance company lawyers are digging in their heels, hoping you'll just run out of money or run out of interest and go away.

Ms MacPherson: Pretty much, yes.

Mr Rob Sampson (Mississauga West): Thank you for your presentation. I don't want to talk about your particular circumstance, but we can kind of translate that into some generalities here to help us deal with the redesign effort that we're going through.

I think you're telling us that you have some difficulty with the tort side, especially as it relates to this threshold, because that seems to be the item that is causing the concern around the tort right now; is that correct?

Ms MacPherson: Having to cross the threshold?

Mr Sampson: Yes.

Ms MacPherson: Yes.

Mr Sampson: So you would be concerned about there being a threshold in a tort claim, if any?

Ms MacPherson: I crossed the threshold. I've got the TMJ, but I've got other problems too that would be more difficult to prove to cross the threshold. Even if the jaw injury was gone, I'd still have other problems, but to cross the threshold would be very difficult to do.

Mr Sampson: Okay. Now on the no-fault side, I found it rather interesting that Mr Kormos was able to question you on the fact that you actually used lawyers to extract the benefits from the insurance companies, I guess is the way he would have put it, so open and on the table.

Mr Kormos: Without Novocain.

Mr Sampson: But you had to use lawyers, but we heard from a number of people saying that one of the beauties of the no-fault system is that it takes the lawyers out of the system and takes the expense of the lawyers out of the system. I gather you'd disagree with that.

Ms MacPherson: I disagree with that. I couldn't even begin to tell you where I would be if I didn't have my lawyer. I don't know how to handle insurance companies. They're there to screw you; they're not there to help you--at least in my situation I found that. They have been no help at all. Like I said, they keep taking me to arbitration, to hearings, to prove over and over and over again the same things.

Mr Sampson: Are you on therapy or treatment now?

Ms MacPherson: Yes.

Mr Sampson: One of the other items we've been hearing has to do with referral among practitioners as it relates to therapy.

Ms MacPherson: Right.

Mr Sampson: Have you seen any of that in your treatment so far, where you have been referred by somebody who's done an assessment on you and has referred you to a clinic that they may have an interest in?

Ms MacPherson: I've been not referred to particular clinics but referred to different types of therapy, yes.

Mr Sampson: Were you aware of any interest that the person referring you may have had in that particular therapy?

Ms MacPherson: No, just in the interests of helping me.

Mr Crozier: Thank you, Ms MacPherson. I want to tell you at the outset, I'm not going to put any words in your mouth, but I am interested in what you have to say.

You say you've been receiving treatment, be it off and on, and that you've had to go to arbitration to get that. Can you just tell us, are you better now--is there progress--than you were at the time of the accident and do you see an end to this as far as your physical treatment is concerned?

Ms MacPherson: Are you asking if I'm going to get better?

Mr Crozier: Exactly.

Ms MacPherson: No. I've already been told the damage is permanent. I've been to a number of therapies over six years. Nothing has helped. After the accident, I had my neck in a neck brace, whatever. The only improvement I've had is neck motion, but as far as pain, the scar tissue and the muscles in my back, it's not going to heal. The TMJ joint's not going to heal. So I don't see an end in it at all. In fact, a lot of the physical therapy, I've been told by different doctors and therapists that there's only about a 10% chance, if even that, of it helping. In fact, it worsens the pain a lot rather than helping it.

Mr Crozier: Can you tell me the circumstances that led to you only starting a tort suit recently, as opposed to a year ago, two years ago, three years ago?

Ms MacPherson: I don't know what the circumstances are. We were supposed to go in November and the judge wasn't available, so we had to wait till now.

Mr Crozier: But when did you first give notice that you were going to sue? Was that some time ago,

like right after the accident?

Ms MacPherson: A couple of years ago, yes.

Mr Crozier: Why would you have taken that long?

Ms MacPherson: I can't answer that.

Mr Crozier: Your lawyer just didn't advise you?

Ms MacPherson: To start suing? We had to go through our own insurance company first, and then start suing the other. I don't know whether it took so many years to prove that I went over the threshold or not, whether that had part to do with it, but the first three years I was fighting my own insurance company.

Mr Crozier: Has anybody suggested to you that were it not for no-fault, you may be receiving--I don't know whether you were employed at the time--an accident benefit of \$100 a week under the pre-Bill 68, you still may not be receiving any therapy, it may still be tied up in court? I suggest, part of the reason for the no-fault was to at least get some of this under way, notwithstanding that the battle may not be any less difficult, but that you may be sitting with something, even now, six years after, tied up in court, not having received any rehabilitation. Has anybody suggested that the system may at least have allowed for something to have happened in the meantime, or does that not matter?

Ms MacPherson: Of course it matters. I don't think I'm any further ahead than I would have been in the other law.

Mr Crozier: But you've received benefits in the meantime, whereas if it were only the tort system, you may simply have no more than a piece of paper filed in court at this time.

Ms MacPherson: Right. I've been receiving benefits but I'd rather have it settled at one time rather than being dragged into arbitration whenever they feel like it.

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Mr Crozier: I guess neither of us will know, but I'm just suggesting that for all the experience and the good and the bad with no-fault, there's also that experience under the old system--

Ms MacPherson: Yes, I understand that.

Mr Crozier: --where it just simply sits in court while you sit on the sidelines receiving no rehabilitation, no benefit whatsoever, while all the lawyers fight over it, and notwithstanding what Mr Kormos says, it happens.

Mr Kormos: He's got the insurance companies--

Mr Crozier: He always gets yippy when somebody else makes a point, so don't listen to him all the time.

Mr Kormos: You have no idea what you're talking about.

The Chair: Thank you very much, Deborah. We appreciate your presentation to us this morning. These kinds of cases give us insight.

Interjections.

The Chair: They're really having fun. This is their method of having fun.

Interjections.

The Chair: Can we have some order, please. Mr Crozier, Mr Kormos, please.

Ms MacPherson: If I can before I leave, I just want to point out one more thing. Another problem that I find with the system is when you've been to arbitration, how long you have to wait for decisions. I've had to wait for up to six months for decisions to be made. Like I said, I'm in court right now. Hopefully it'll end tomorrow; it's supposed to. But even a decision from that could take up to nine months or more. You have to start looking at us, the victims, because it's my life they're playing with. I feel like it's a game. The lawyers think it's a big game and it's me being screwed around and it's just not right.

The Chair: We do appreciate your input, and thank you very much for coming to the meeting.

Interjections.

The Chair: Gentlemen, your time has expired.

HEAD INJURY ASSOCIATION OF LONDON

The Chair: We now welcome the Head Injury Association of London, Dr Gillett. Welcome to the standing committee on finance and economic affairs. The committee seems to be in a festive mood this morning, but we'll try to keep some manner of control.

Dr Jane Gillett: I like good arguments.

I'd just like to first start off by telling you what kind of people I'm representing today. I am a board member on the Head Injury Association of London. As well, I happen to be the medical director of the paediatric traumatic brain injury rehabilitation team at Children's Hospital of Western Ontario and at Thames Valley Children's Centre, and I do outreach head injury clinics throughout southwestern Ontario, so I see a wide range of children with head injuries and a lot of problems throughout the province.

What I'd like to address is some of the issues that I have in terms of the amendments to the new no-fault and put it more in terms of the children, because often, when you read through the document, it talks a lot about getting back to work, vocational rehab etc, but there isn't a lot of emphasis on the needs of the children and the paediatric population, and I'd like to address some of those today, if I may.

The first one, and probably the main one, that I would like to address is the definition of "catastrophic injury." There are several portions to it, but the one in particular that I'd like to address is in section 2, clause (b), where they describe "'catastrophic impairment' meaning brain impairment which results in a score of 9 or less on the Glasgow coma scale, as published in the 'Management of Head Injuries,' Contemporary Neurology series, volume 20."

What I'd like to propose is that we add in the amendment "or which results in substantial interference with cognitive and behavioural functioning." The reason why I'd like to bring that up is as follows: When you look at the list of what they define as "catastrophic injury," most of the definitions that they use are strictly physical definitions--total loss of vision, loss of the arms, loss of an arm and a leg, paraplegia, hemiplegia etc.

I'd like to point out that you can be blind, you can be paraplegic, you can have no arms and still manage to carry on in this world quite successfully with the use of technology. You can hold down jobs. I happen to know a physician who's blind. I happen to know another physician who is a paraplegic. I don't believe they look upon either of their impairments as being a handicap or a disability or catastrophic. That's not to say if it happens to you acutely that you would not need some rehabilitation, but I think there's more to what happens in a motor vehicle accident than just necessarily physical injury, particularly with acquired brain injuries.

In acquired brain injuries, most of those with acquired brain injuries are left with cognitive and behavioural injuries. The reason for that is when you have an impact to your brain, your brain goes

crashing forward into the front of the skull and rides back again and then goes crashing forward again. The frontal lobes and the temporal lobes are the ones that impact on the skull, and on the base of your skull there are tiny bones that stick up that rip your brain as it's running back and forth. Your brain's like Jell-O. You all know what happens when you hit a bowl of Jell-O and how it ripples back and forth. That's what your brain does in an accident.

So you've injured your frontal lobes, you've injured your temporal lobes. They have to do with memory, they have to do with thinking, they have to do with attention and concentration. All those things are really important when it comes to learning, when it comes to being able to hold down a job, when it comes to being able to function in today's society. If you can't think and you tend to suddenly go off the handle and decide to attack somebody and take a knife to them, and I have at least four children right now who periodically try and do that because of their head injuries, you're really in trouble, and they're the ones who are going to need the long-term ongoing care. I believe if it's not put in as part of the definition of "catastrophic," there may be some difficulty in the long run in battles over whether or not they truly are impaired sufficiently to deserve the catastrophic component to it.

Furthermore, if you use the Glasgow coma scale of less than nine as your criterion, you will catch several people who will have the behavioural injuries, but not all of them occur with Glasgow coma scales of less than nine. They do occur with Glasgow coma scales of greater than nine, particularly in children. Again, the reason for this has to do with the fact that it's a child. A child's skull is not fused together like yours and mine. It's designed to allow growth and it is therefore separated. So when you have an injury that would cause a Glasgow coma scale of less than nine in an adult, you often do not get that degree on the Glasgow coma scale in a child. That's because the skull will allow the brain to expand. You don't get the same degree of pressure on the brain and you do not put them into a coma on that basis.

If you use just a Glasgow coma scale of nine or less as your criterion, you're going to miss helping those children, and they're the ones who are going to require long-term, ongoing support for the rest of their lives, and we're talking from the age of five and six right on up into their 30s, 40s and 50s.

The other component as well with children is that part of the Glasgow coma scale requires you to be able to talk. You get rated on whether or not you can verbalize and say who you are and what's going on and how you respond. Obviously, a child does not learn to speak well enough, so that you cannot use the Glasgow coma scale in a young child. Again, that makes it very hard to rate a child as having a Glasgow coma scale of less than nine. So I think serious consideration should be given to modifying and amending that component of catastrophic, which is why we're recommending the amendment that I added in my handout here.

The other component that you might like to know--at least I'm going to assume you'd like to know because I'm going to tell you about it anyhow--has to do again with the fact that children are not little adults, that they're growing and they're developing. As such, I'm sure all of you have had some experience with two- and three-year-olds, if not your own, at least nieces and nephews and/or grandchildren, depending on how old you are, but a three-year-old doesn't have an attention span. A three-year-old goes from one thing to the other thing and darts around and has a great time and plays, and you would not expect a three-year-old to have an attention span.

The problem is that if you have a child who has an injury at three, they come back with that short attention span but they fail to go on to develop the attention span when they're eight or nine. That's when the problems start to show up and they have more difficulty in school. They start to have the behavioural problems because they don't understand the rules in the school yard, they don't understand the rules of society, they don't quite catch everything that's going on. They think they understand and they react before they have a chance to do anything more and then they're into the fights in the school yard. With the zero tolerance, they're the ones who are getting kicked out of the school now because they're so impulsive and they're unable to control their behaviour.

When you have an injury in a child at age three, they will frequently look and act like they've recovered, because they're acting like a three-year-old. It's only when they're older and they fail to do the normal development that you realize the full impact of the head injury, and that's when the behaviour and the

cognitive issues really come to the forefront. But again their Glasgow coma scale would not have indicated that that's going to happen.

Further along the line in terms of children and their needs, the way I read the provisions--and I admit I'm not a lawyer so I do get confused when I'm reading them--there is provision for some educational assistance but not anything that goes on for the long term. If you think in terms of a child who is acting at age three like an age three but gets into grade 5 and is still acting like someone who's aged three and is having a lot of difficulty with learning, it's in grade 5 that they're going to need the educational assistance, not when they're, say, four, not when they're five and not when they're six, and it's only going to get worse because the educational demands increase. They're expected to attend more, they're expected to concentrate more, they're expected to process faster and they can't do it. They fall further and further behind and they get into more and more trouble. So there should be some provision made to provide further educational assistance for children.

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The other component I'd just like to address has to do with the definition of the health practitioner in section 2 of the regulations. This has been an ongoing thing, as far as I can tell, where they say that a health practitioner is a physician, a chiropractor, a psychologist, a dentist, I believe an optometrist, and a physiotherapist. I would like to make the case that an occupational therapist and a speech-language pathologist should also be included as being health practitioners.

An occupational therapist would be one who's probably better able to assess the functional needs of a child, or an adult for that matter, and what kinds of adaptation and technology may be of assistance. A speech-language pathologist would be one who could assist with the aphasia, the difficulty in finding words, the ability to understand language, the ability to understand the social implication of language, to know that when a person is saying, "You said what?" that they mean they're asking a question versus when they say, "You said what!" when they're really astounded and surprised, because people with head injuries have difficulties with that as well. I think without including an occupational therapist and a speech-language pathologist as health practitioners, you're doing a disservice to the people with head injuries. Are there any questions so far?

Mr Sampson: Thank you for your presentation. Your recommendations for the change to "catastrophic impairment," is there a time reference here? You suggest that we add "or which results in substantial interference with cognitive or behavioural functioning." Should there be a time limit that this added phrase should apply to? I mean, how long can one expect to be tied by that extra phrase?

Dr Gillett: There are two components to the answer. In an adult there is evidence to suggest that if you have suffered a substantial head injury, your risk of developing Alzheimer disease early on goes up, but that means instead of getting it perhaps at age 75 you're actually going to get it at age 60. Alzheimer patients need a lot of support. Do I think that the no-fault insurance should be responsible for it? Probably not.

But the difficulty with children is that the effect of that head injury does not show up because they haven't developed those skills that interfere with what they're expected to do until they get older. From that point of view, I think that it should be left open for the needs of that child, at least until they've gone through several years more of schooling, to see whether there's going to be a difficulty.

Mr Sampson: What about the Glasgow outcome scale? We've heard some suggestions that that's an alternative we might look at.

Dr Gillett: The Glasgow outcome scale is a pretty crude scale. It doesn't really look at behaviour and function all that well. It looks more at the physical outcome and a child would score fairly well on that initially, because most children who have had acquired brain injuries are not left with a major physical impairment. They're left mostly with the cognitive and the behavioural injuries. They would score really quite nicely on that, and the problems would not show up until they were an older age group. I don't use the Glasgow outcome scale in what we do because it's not a sensitive enough scale to pick up the difficulties.

Ms Annamarie Castrilli (Downsview): Thank you very much, Dr Gillett. It's good to have a practitioner speak to this issue. I'd like to go back for a moment to your amendment. You talk about "substantial interference with cognitive or behavioural functioning." I wonder if you could help me understand how you would define "substantial interference," who would decide what is substantial interference under your model and, to pick up on the question that Mr Sampson posed, whether you would be advocating periodic re-evaluation. You've discounted the Glasgow outcome scale and I take you at your word--you're the expert, I'm not--but I wonder if you could help us on those other issues.

Dr Gillett: From the standard that the head injury team here in London does, we see the children initially fairly frequently and continue to see them throughout their school-age programming. Like I said, you often start to get the problems when they're older, and we go in on behalf of the child to the school and try and make them understand what happened, why the child is behaving the way they are, how the school can help. I think there is a need for a sort of ongoing assessment and intervention along those lines.

What do I mean by "substantive"?

Ms Castrilli: The problem is someone's got to interpret it.

Dr Gillett: Yes, I know.

Ms Castrilli: If the medical profession doesn't do it, then the legal profession or the courts will have to do it.

Dr Gillett: That's true. From my point of view, we're looking at substantive interference if they need ongoing educational assistance, like a full-time educational aide, to help them in school to be able to learn and be able to attend, or if they need behavioural modification programming in some form, so that they're actually taught skills on how to control their anger, how to read social language, how to interact in society, that there's a substantial impairment. Whereas if they have an attentional difficulty which is easily controlled with some minor modification in the school and some medication, perhaps that's not necessarily as serious an injury.

If you look at OHIP right now and the people they have in the States, they're all in the States because of behavioural issues. They're not there because they need physical rehabilitation; they're there because of their behaviour and the need to train them again on how to fit back into society. So I think that's one thing I'd look at.

Ms Castrilli: But who would decide? You're alluding that it might be teachers and doctors. What kind of mechanism would you devise for that?

Dr Gillett: There are a lot of factors that interact with behaviour. Sometimes the child has a problem but what you really need to do is to teach the family. The child's too young to learn, so you teach the family how to deal with the child's behaviours. In that case it's probably a combination of a psychologist, a neuropsychologist, teachers, family members and the physicians involved in looking after them, be it paediatric neurologists like myself or other physicians who have had experience with head injuries.

Mr Kormos: Thank you, doctor. As you know, the Ontario Head Injury Association and various regional head injury associations have been active in discussions on auto insurance, dating back to Bill 68, Bill 164, and now to this no-name piece of legislation.

Your comments echo or at least parallel similar comments made by other advocates for persons with TBI/ABI that have made presentations across the province. One of the things I would perhaps want to point out is to emphasize the incredible personal cost to the person who suffers TBI/ABI, the family cost and the social cost, however crude that may be.

Dr Gillett: That's true.

Mr Kormos: It was mentioned earlier that I was a lawyer. Quite right. Mind you, it was criminal defence work, which is a highly suitable background for working with politicians. But one of the things I experienced in that practice was an inordinate number of young people inappropriately, in my view, before the courts but in fact persons with ABI/TBI.

Dr Gillett: That's true.

Mr Kormos: And again, one looks at the tragic cost. I'm concerned about the two-tiered system in terms of funding for rehab for ABI/TBI persons and this creation of a threshold, if you will, the catastrophic. Even with your amendment to it, which I would certainly support, the fact is that shouldn't all ABI/TBI persons be entitled to rehab so as to fulfil as much of the potential that can possibly be nurtured in them if they're victims in motor vehicle accidents within an insurance scheme? Why should there be two tiers? Why should there be an arbitrary cutoff point? Because a whole lot of ABI/TBI rehab won't come anywhere near the cap for the second tier.

Dr Gillett: I agree. I mean, 40%, 50% of what I see in acquired brain injury is not caused by a motor vehicle accident and it is far more difficult to find services for them than they are currently if you're with the motor vehicle accident. In fact, we joke around about how, if you're going to have a brain injury, make sure it's because of a car and not because of anything else.

I agree with you. I would prefer that all acquired brain injury have access to the services that they need in a prompt manner, but that's not reality.

Mr Kormos: Sure, but within the context of an auto insurance scheme, realizing that we're dealing here with victims of motor vehicle accidents, why should there be two levels of rehab available, one for a diagnosis that's below, in this case, your nine-point proposal or the subjective interpretation?

Dr Gillett: Actually, that's one of the reasons why it's put in there as being an "or," so that those people whose Glasgow coma scales were above nine but do have the behaviour and the cognitive difficulties can get the help they need. So you're not using the nine strictly as your criterion.

Mr Kormos: I'm wondering if maybe we shouldn't delete the Glasgow coma scale and simply talk about substantial interference with cognitive or behavioural function. Is that a fair consideration?

Dr Gillett: I'd like that, yes.

The Chair: Thank you, Dr Gillett, for sharing your experiences with the committee today. We appreciate that.

RAINBOW REHABILITATION CENTRES, ONTARIO

The Chair: We would now like to welcome the Rainbow Rehabilitation Centres, Ontario, Dr Newell and Dr Freilink.

Mr Kormos: I hope these folks know there's free coffee for them, Mr Chair.

The Chair: Yes, there is coffee out there.

Mr Sampson: There's nothing free, Peter, as you know.

Mr Kormos: I thought you paid for it.

Mr Sampson: It's on your bill, actually.

The Chair: It's on the taxpayers' bill, I'm afraid, as everything else is.

Ms Nancy Dool-Kontio: Thank you very much. I'll just introduce everyone at the table. My name is Nancy Dool-Kontio. I'm the intake coordinator at Rainbow Rehabilitation Centres. On my left is Henriette Freilink Wilcox, a physiotherapist with our centre, and Dr Emilie Newell, who is a physician of physical medicine and rehabilitation, also at our centre.

We'd like to thank you, Mr Chairman, and the standing committee, for having us here to present to you today our view on the draft insurance legislation. Rainbow Rehabilitation Centres is a private facility providing services for persons who have sustained traumatic brain injuries. I was interested to see that the previous speaker also spoke on brain injury, so you're probably going to hear some overlap in our presentations.

Rainbow rehab centre was opened in July 1993 in response to the need for brain injury services in southwestern Ontario. Rainbow rehab centre provides community-based services with the goal of community re-entry for our clients, with the main idea of returning the client to their maximum level of functional performance. We service clients on an outpatient basis in our clinic but also in the community, in their homes, in their workplaces or at school, and also through our residential supported living program.

As I'm sure you are aware and have heard from other presenters in Ontario, there are approximately 12,000 to 15,000 people who sustain a brain injury every year, and approximately 60% of these are a direct result of a motor vehicle accident. The majority of the people in this category that receive a brain injury are males between the ages of 18 and 35. You've probably also heard that a high percentage of people who sustain brain injuries do not return to full-time, competitive employment.

We have reviewed the draft legislation, and I've outlined goals that we understand are present through this process, the goals being: to reduce automobile insurance premiums, to provide swift access to reasonable rehabilitation, to allow for timely settlement of claims and disputes and to provide an environment that minimizes the risk of fraud and abuse in the insurance industry.

However, in reviewing the legislation, we have several aspects of the document that we would like clarified and amended. These include the following: first of all, the definition of "catastrophic impairment" as it relates to brain injury; second, the monthly limits on attendant care expenses; third, unrestricted insurer examinations; and fourth, the process for establishing a professional fee schedule for services.

I will begin with number 1, the definition of "catastrophic impairment." In the regulations, under the "Definitions" section, Rainbow Rehab Centres has concerns about the proposed definition as it relates to brain injury and the method by which the draft is suggesting the injury be quantified. The definition reads:

"'catastrophic impairment' means...

"(b) brain impairment which results in a score of nine or less on the Glasgow coma scale...."

We understand that the intended purpose of the proposed definition is to provide a method by which to quantify the degree of injury and impairment and, in effect, the higher level of funding for med rehab benefits will then go to those individuals who have more substantial injuries and subsequently more substantial need.

We do recognize the need for objective, consistent and fair means by which to distinguish these individuals from individuals who have less significant impairments. We do not agree, however, with the use of the Glasgow coma scale as the only measure of impairment or disability resulting from brain injury. We understand the intended use of the GCS was to be for acute emergency medical management.

We are aware of various clinical situations where the GCS would prove to be an unacceptable and unfair indicator of appropriate treatments for injured persons. These situations would include times when the GCS score may not be measured or recorded and times when the GCS is measured at a point after which the level of consciousness of the injured party has already started to improve. In southwestern Ontario,

we service many rural clients. They may be injured on country roads late at night. They may not have immediate access to medical care that arrives in a timely manner, and therefore their GCS scores may not accurately reflect, depending on when it was measured.

We have treated and are presently treating persons with brain injuries who represent a wide range of GCS scores. At this time, we feel that a score of nine or less is not a definitive measurement of functional impairment or prognosis for recovery. We have worked with individuals with GCS scores greater than nine who demonstrate serious, lifelong functional impairments.

We would suggest the use of a measurement that reflects the functional impairments and/or disabilities and handicaps resulting from the brain injury. It is understood by us that several other presenters have suggested the use of the Glasgow outcome scale. We would support this recommendation, as it is understood the scale is designed as a measure of outcome for a person with acquired brain injury. However, we would also recommend that it may be beneficial to investigate the use of other suitable outcome measurement scales that are multidimensional and functionally based as well. It is suggested that this may be achieved by having a standing committee such as yourselves consult with a broad range of health care providers to get input on what other additional tools may be available.

I'll now move on to our second point, limits on monthly attendant care expenses. This is under part V. It is understood from reviewing the draft regulations that the proposed monthly benefits of attendant care shall not exceed the limit of \$3,000 for someone who has not sustained a catastrophic impairment and a maximum of \$6,000 per month for individuals who have.

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Rainbow rehab centre is concerned about these monthly limits for persons with brain injury. The nature of brain injury tends to be complex. Persons with traumatic brain injury as a result of a motor vehicle accident may suffer a range of musculo-skeletal injury as well as cognitive and behavioural impairments. In many cases, the injured person's musculo-skeletal injuries will resolve in a shorter period of time; however, their cognitive and behavioural impairments, as well as neurologically based physical impairments, may continue to have lifelong impact on the person's functional abilities.

In some cases, the person with brain injury will require up to 24-hours-per-day attendant care. The proposed monthly limit of \$6,000 for the injured person requiring 24-hours-a-day attendant care allows them approximately a cost of \$8 per hour to pay an individual. The current average cost in the London area for basic attendant care ranges from \$13.50 to \$15 per hour. At these current rates, the injured person would only be able to access approximately 13 hours per day of attendant care services.

Rainbow has observed that when resources available through insurance coverage to the person with brain injury are insufficient or become depleted, the only alternative for the injured person is to attempt to access publicly funded services, in effect placing the cost on the public system and on taxpayers. Public costs for care include stays at chronic care hospitals, nursing homes, community home care agencies, psychiatric facilities and correctional services. Family members who do their best to support their loved ones in their homes may find themselves also in financial and emotional distress, requiring the use of publicly funded support services or financial services, including things such as social assistance or welfare.

Rainbow rehab centre recommends that the monthly benefit for attendant care be established on an individual basis through the use of an assessment process. In circumstances where individuals require a level of care in excess of the monthly limit, it is suggested that the individual case be referred to a DAC for attendant care. This provision will allow the injured person the opportunity to have his or her individual needs addressed.

I'll now move on to number 3, unrestricted insurer examinations. This is in respect to part X, "Procedures for Claiming Benefits," subsection 46(3), where it says, "The insurer may require such examinations as often as is reasonably necessary."

Rainbow rehab centre is concerned about the wording "reasonably necessary." In this proposed aspect of

the draft, it appears that the insurer may have unlimited right to examinations. We would suggest that a clear definition or clear guidelines be given to explicitly reflect the meaning of "reasonably necessary" and that the wording be changed to reflect that. As the current draft reads, the wording "reasonably necessary" allows for a wide variation in interpretations by the insurer and may subsequently subject the insured to numerous examinations and/or misuse of the examinations.

We would recommend that the limit for examinations be explicitly stated, indicating a suitable maximum per year or per monthly period to be completed by any one health practitioner. Guidelines that we would suggest would be three examinations per 12-month period. These guidelines would serve to benefit the interests of the injured person as well as maintain costs.

We would also recommend that the wording of this section reflect that the health practitioner providing the examinations for the insurer must provide opinions only appropriate to his or her expertise and/or professional qualifications as indicated within one's professional scope of practice. We have experienced, clinically, specific instances where persons with brain injuries have had benefits and/or services withdrawn on the opinion of examiners not qualified or with limited expertise who render opinions regarding cognitive and behavioural issues and comment on ongoing attendant care needs for the injured person.

I'll now go on to part 4, the establishment of a professional fees schedule. With respect to part VIII, "Reimbursements," under "Cost of Examinations," subsection 32(3), the draft appears to be looking at proposing a limit on professional fees. Rainbow Rehab Centres recognizes the need for a certain degree of uniformity and consistency in professional fee schedules. However, the phrasing of this raises concern regarding a conflict of interest when the Ontario Insurance Commission is involved in establishing the professional fees schedule. We are also concerned with the wording of "as it may be amended from time to time," suggesting the lack of a clear process for fee review.

We would recommend that the professional fee schedule be developed in collaboration and consultation with a wide variety of health care providers, including private sector and professional organizations. We would also recommend that the wording of this section be amended to reflect an annual review process for the professional fee schedules.

We agree with the statement of having the professional fee schedule published in the Ontario Gazette by the Ontario Insurance Commission.

At this time we would like to thank you for listening to our viewpoint and we would be happy to answer any questions in the time remaining.

Ms Castrilli: I'd like to address something you've not touched on in your presentation, and I apologize for that. We've had a lot of discussion on the conflict-of-interest rules and specifically the referral for profit and what should be done about it. You are obviously in a private clinic that caters to a specific clientele that gets referrals from a variety of places.

Ms Dool-Kontio: That's right.

Ms Castrilli: I wonder if you might comment on that aspect and what you think should be done.

Dr Emilie Newell: Any one of us could address this. I'll speak quite clearly to services for people with ABI, leaving out muscular, skeletal and so on. ABI services in Ontario have been pretty scant. I've been in the system for about 20 years and have worked through the entire range of services, including liaising with American programs. With so very few services available in Ontario, it is appropriate that we recognize if there is conflict of interest. It's appropriate that the cards be on the table, and if there is conflict that it be recognized appropriately. However, I don't think it should rule out the provision of services where the conflict arises, just because of the lack of services throughout.

Ms Castrilli: So you'd favour disclosure necessarily and that right then--

Dr Newell: Yes, that is correct.

Ms Castrilli: --and referral for profit on the part of physicians and lawyers and so forth.

Dr Newell: Yes.

Mr Kormos: Thank you, people. You make reference to the fact that people who aren't covered under the provisions in this as of yet unnumbered bill find themselves seeking public services. The sad fact is, though, that in short order there are not going to be very many public services left, which is an unfortunate and egregious abandonment of injured people across the board. In particular, you've addressed this business of insurer examinations. Let's cut to the chase here. This is all about the so-called anti-fraud measures?

Ms Dool-Kontio: Right; I think so.

Mr Kormos: To be fair, I suppose I can understand why somebody might want to fake or enhance a whiplash injury because it means another week off work--maybe. I suspect there might be. Who would want to or be capable of faking ABI? Give me a break.

Ms Dool-Kontio: No one I know.

Mr Kormos: Who would want to or be capable of faking traumatic brain injury?

Ms Dool-Kontio: I'll just state my personal opinion. I think it would be very difficult, based on the complex diagnostic procedures that are used to measure brain injury, to fake a brain impairment. I also think that the seriousness of brain injury for the clients and the long-lasting impact it has on them would not be something you would wish to sustain or partake in. Dr Newell could speak more to the diagnostic procedures.

Dr Newell: Let me address this. The issue is never with individuals who have had a severe brain injury. They are very obvious. Where the issue arises is the definition of who is eligible for benefits, because one has to demonstrate that there has been impairment, at least so far, of a serious function, and ideally to have objective measurement and imaging of the brain in order to produce to come within the definition.

Most of the people who have been in motor vehicle accidents and have brain injury are going to fall within the realm of mild brain injury. It's going to be somewhere between 70% and 80%. They are also going to have whiplashes. They're going to have a lot of psychological, emotional distress. The issue is, is there a mild brain injury or not? There may be recognition of cognitive dysfunction--in other words, things aren't working right--and is it because of psychological distress, is it because of mild brain injury? We go through all sorts of shenanigans for months and months of trying to prove that there has or has not been a brain injury. That results in independent assessments. It involves numerous, months and months of delay for treatment.

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Mr Kormos: In a way it's a serious impediment to recovery, isn't it?

Dr Newell: Yes.

Mr Sampson: Thank you for spending the time and coming to speak to us this morning. I want to talk to your item 4, the fee schedule concern. I think you'll find that section refers to the fees charged by designated assessment centres, but we have made statements that we believe it's appropriate, in fact as you have suggested, for the practitioners and the industry, and perhaps representatives even of claimants, to get together and come to grips with a standardized fee schedule that can be adhered to. There are fee schedules out there now. The fact of the matter is they're not adhered to. I see some nodding, so I gather you've seen some of that happen in the system.

Your recommendation is a good one. It's one we've heard numerous times over the last couple of weeks,

and indeed, I guess in my vernacular, the person paying the cheque and the person receiving the cheque should come to grips with what the fee is and not have it imposed from above by some Legislative Assembly that's not involved in the process. I want to ask you, though, what do you think the form would be for that? How do we get the groups together to come to grips with the fee schedule and other related items, maybe treatment protocols, maybe even accreditation processes? How do we do that?

Ms Dool-Kontio: I think you would need to get representation from professional organizations--all the regulated health care providers would have people who could sit on that--as well as service providers in the community. For example, in the London and surrounding area there are three main brain injury service providers. In other bigger area centres like Toronto you would have a much greater draw and different aspects to look at. It would be important to look geographically at all of Ontario because there may be price differences based on where you live geographically and how much competition there is in the market.

Mr Sampson: Is this an achievable objective in your view?

Ms Dool-Kontio: We sit on several committees, Ontario province-wide committees, like the brain injury advisory committee, and private service providers. It's feasible that we get together one day or one afternoon out of the month and discuss important issues. If it was important to the people involved, they would come and they would give their input. They would have someone there.

The Chair: We appreciate the presentation from the Rainbow Rehabilitation Centres today. Thank you very much for joining us.

ONTARIO WEST INSURANCE BROKERS

MAY-McCONVILLE INSURANCE BROKERS

The Chair: We now welcome the Ontario West Insurance Brokers and also the May-McConville Insurance Brokers. Gentlemen, we welcome you this morning.

Mr Bill Boland: My name is Bill Boland and this is Peter McConville. Before we commence the presentation, Mr Kennelly was unable to be here today, so Peter and myself on quick notice were able to put together a brief presentation for you which will leave probably sufficient ample time at the end for questioning with respect to our piece of the puzzle of automobile insurance in Ontario.

I want to thank you for allowing us the opportunity to present to you today our brief on the proposed automobile insurance changes and on the state of the Ontario automobile insurance market.

My name is Bill Boland, I am a principal of Ontario West Insurance Brokers in the city of London. Our firm is small. It represents 1,500 automobile clients and we have a staff of six.

Mr Peter McConville: My name is Peter McConville. I am the principal of May-McConville Insurance Brokers here in the city of London. Our office is in London and we have a small branch office in Sarnia. Our firm represents approximately 13,000 auto insurance clients and we have a staff of around 40.

For some time now you have listened to opinions and problems related to the current system under Bill 164, and have had a parade of individuals and groups, many with very apparent special interests, presenting their cases before you. The government should be congratulated for its initiative in addressing this issue early in its mandate and allowing public input.

In our opinion, there is no question that should Bill 164 continue, insurance premiums will escalate beyond what our customers are prepared to pay.

The proposals are a vast improvement over Bill 164, and each special interest group would like to have some modification. The simple fact is there will be costs associated with each and every change. This committee has to find the balance for the average consumer.

We believe the proposed system will generally and adequately insure the average driver of Ontario and does not force them to pay for benefits over and above their requirements. For those who have needs over and above a basic package, there should be provisions for optional coverages which trained, licensed, regulated insurance professionals are able to provide.

For those consumers or not-at-fault victims who are seriously injured in a car accident over and above the benefit packages, then provisions for access to tort, in our view, is a progressive step forward.

To summarize, we feel that there should be a return to the basic principle of indemnity rather than entitlement.

Mr Boland: There are many variables that affect a fair price with respect to the automobile product. Premiums are affected by the cost of physical damage repairs, the value of the Canadian dollar, weather conditions--I don't need any more evidence on that than what happened on the 401 yesterday morning--accident frequency, the escalating level of vandalism and the theft of vehicles which is occurring in all of our communities and, probably the most important of all, road safety.

We are unable to control many of the above factors affecting the costs, yet the provisions of the government's proposal attempt to address many of the controllable costs such as fraud and escalating medical and rehabilitation costs, although we feel the legislation can go further to control rehabilitation abuse and conflict of interest. Interesting, the last speaker and the questions directed to her in that regard.

For many Ontario motorists the present system has become unaffordable and unavailable. As brokers we are optimistic that the proposed changes will restore an open market competition--a key word there is "open" market competition--encouraging companies to risk underwrite. In addition, the market will be further enhanced if all insurers are allowed more rating variables to level the playing field between those insured through group plans and those as individual policy holders.

Mr McConville: For a quick summary of our proposal we offer: The first item is to repeal Bill 164; secondly, introduce a basic policy to indemnify the majority of claimants; offer optional benefits, allowing access to tort for those who are not at fault and the benefits do not suffice; improve road safety; control and regulation of rehab; repeal 5% sales tax; streamline the OIC.

Mr Boland: We would like to thank the committee for allowing us the opportunity to present our brief presentation and trust we have given you some information to assist in your final deliberations. If you have any questions, Peter and I would be more than pleased to answer them for you.

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Mr Kormos: Thank you, gentlemen. I'm sorry Mr Kennelly couldn't be here because he, once again, is a veteran of these things. I really want to reflect on--because again, I really think there's been enhanced confusion about what is insurance, especially with the introduction of an enhanced no-fault beginning with OMPP and then--agreeably, no issue with anybody--164.

Look, historically in our society--and it predates us back into pre-Christian times, and we're talking about the responsibility of a wrongdoer to compensate the person they hurt, and these folks know it goes back to Leviticus in the Old Testament, lex talionis, what have you--the reason why auto insurance was made compulsory was so that you or you or I driving on the road could be assured that when we were injured by somebody else there'd be somebody to back up that driver or vehicle owner in terms of getting compensation from them. Boom, end of story--in itself, not a complex or a confusing proposition.

No-fault benefits of course pre-existed Bill 68. They were introduced at least a decade before and, mind you, they hadn't been developed with the passage of time, but it was recognized that all injured parties should have some modest income replacement. When you've got a primarily no-fault system--right?--when people are insuring themselves rather than insuring themselves against claims by people they injure, doesn't that start to diminish the need for insurance to be compulsory? Because, as I say, the reason insurance is compulsory historically is that if I'm injured I want to be sure that Mr Brown

or Mr Ford, what have you, has adequate coverage to compensate me for my injuries. That's the only reason it was made compulsory.

I can go out now and buy income replacement insurance whether I'm a driver or not. I can buy sickness and accident benefits. Hasn't the issue become increasingly confused by the high role of no-fault benefits and the fact that we're imposing now upon drivers a concept of self-insurance which has never been historically related to the concept of auto insurance?

Mr Boland: If I can address part of the question, and, Peter, his comments. First of all, I think the general public are not all members of employer-sponsored programs which have group benefits for them. I have no idea what percentage are as against which percentage are not. But if an individual were to come into either Peter or my office today and wants to buy a health care program, dental etc, the cost would be abhorrent, greater than an automobile insurance program. Now, mind you, that will protect that individual 24 hours a day, not just in an automobile accident and for all sorts of incidents that may happen if he falls off his ladder at home. But the point is, it is expensive and the consumers would not be able to afford that.

Now we have the situation of an individual, if the automobile insurance is not compulsory, involved in an accident, doesn't have a group-sponsored plan, doesn't have a plan, who pays for that? The public purse, and the public purse is broke.

Mr McConville: And in all cases of every bill we've had before insurance changes, there has been a form of tort available to them, whether it's through some form of threshold or whether it was pure access to tort, prior to OMPP. So either way, there was that access to tort over and above that so people are going to need that required coverage.

Mr Kormos: But tort has been chimerical. In the case of 68--now mind you, I'm not disputing that. I'd far rather be injured, if I were an innocent victim, under 68 than under 164 or even under this proposed legislation if I were seriously injured and passed the threshold. But in the case of 68, tort was very limited to only the most catastrophically injured people. Bill 164 paid lip-service to tort, because you see there was an effort to appease the bar in that one by introducing tort for pain and suffering with a \$10,000 deductible, which made it irrelevant to a vast majority of victims.

This legislation, in terms of so-called addressing tort, all it does is emulate, interestingly, the new Saskatchewan model which extends the no-fault benefits, because that's all the tort access is, to 85% of net, the same as the no-fault benefits beyond the new cap of \$400 for higher-income earners. In fact, if a person is a higher-income earner and does have workplace-provided or self-provided wage replacement benefits, there is no tort then, in any event, because that person has to access--

The Chair: Do you have a question, Mr Kormos?

Mr Kormos: Yes.

The Chair: A short one.

Mr Kormos: --that person has to access that workplace-provided or sickness and accident benefits. It's really illusory. Why aren't we getting down to the nitty-gritty and either implementing no-fault or restoring the prominent level of tort?

Mr Boland: Is that your question, why we're not?

Mr Sampson: We've been struggling all week to--

Mr Boland: I was going to say, might I suggest, Mr Kormos, that's your and your committee's prerogative and why we're having these hearings.

The Chair: Thank you very much. We appreciate the brevity of your answer.

Mr Sampson: As opposed to the brevity of the question?

The Chair: That would go without saying, I suppose.

Mr Bob Wood (London South): I'd like to ask you about your suggestion that we should streamline the OIC. Do you see there being any possibility in getting rid of the OIC and giving its functions, where they're needed, to other bodies? Do you think that's a realistic possibility and, if so, how would you do that?

Mr Boland: A very brief answer: Yes. How I would do it: There are many aspects to the Ontario Insurance Commission which over the last few years have been an irritant to myself personally. One is, when we lost an insurer, Maplex Abstiners Insurance Co in Ontario, the Ontario Insurance Commission was of absolutely no value to any of those claimants who were subject to a lot of delay in the settlement of their claim process; was of no value to the process with respect to--I had a client in my own office, for example, the claim had been settled, the cheque had been issued prior to the default of the company being declared by the courts, yet the cheque had never been sent out. When the insured got his car some months later, a lien was going to be placed against his car and seized because the auto repair garage had not been paid.

In taking this person's case to the Ontario Insurance Commission, once you could get through the bureaucracy of the voice message machines and punching numbers in forever, the answer I got back was, "Go see Deloitte Touche; they're the trustee in bankruptcy."

The case of issuing documents with respect to the competitive nature of automobile insurance in Ontario and the list of companies: That doesn't need to be done by a bureaucracy or by an organization that's costing--and it is an inherent cost to the insurance companies which has to get passed on to the consumer--that's available. Look at the yellow pages. In London alone there's probably 15 pages of yellow pages that an individual can call any insurance broker or company direct and obtain competitive quotations. Let the marketplace dictate that. There are, what, 135 insurance companies licensed in the province of Ontario. We don't need a commission to produce competitive rates.

Those are just two or three of the factors, Bob. There's much, much more, if I had a lengthier time, with respect to the commission that should be done away with. On a general basis, yes, do away with it.

Mr McConville: As a matter of fact, I have one more thing. Part of the OIC was to help control the rating of Ontario, where the average company in applying for a rate decrease now has to wait weeks and weeks to get a response from the province of Ontario. So in some ways it's holding up the competitive nature of the product rather than enhancing.

Mr Boland: One other point on that, if I may, which is the other irritant. Which review? When we were reviewing this process a number of years back, I think some statements were made--and I believe it was when the NDP was in power--that age, sex and marital status were going to be done away with respect to the rating of an automobile policy. The only thing that should affect the rate was the type of vehicle the individual was driving and their driving record.

That has not been corrected under OIC and, in fact, part of our proposal here is that there needs to be more variables in order to make the product more competitive for some individuals with respect to double collateral benefits, and that's just not being done. It's done for some companies who are allowed to mass merchandise in group auto, but it's not done for the vast number of other companies that are doing business in the province. So in that regard the OIC has not served the public well, in my opinion.

Mr Wettlaufer: Gentlemen, we've heard that the cost of lawyers is going to dramatically increase the cost of the product under the readvent of tort. We have seen, in the last couple of weeks, that no-fault hasn't really eliminated lawyers from the system and, in fact, on doing a little bit of checking, my understanding is that we had approximately 1% of the cost of the product was caused by the lawyers in the old tort system prior to Bill 68, and in fact it's still about 1%. Do you have any comment on that?

Mr McConville: With any product that has an appeal process, if it's not a pure no-fault product or even

if it is a no-fault product, if there are ways that claimants can go through some form of an appeal process, either through lawyers or through rehabilitation, you're going to have that cost. That's something that has to be borne by society through insurance, and that's going to be cost of insurance.

A lot of lawyers do get involved--there's still a lot of larger claims--with the dispute in benefits, of no-fault benefits. I think that's created a special niche for lawyers. If you speak to any of the larger law firms around the province, in each of the major law firms where before there were a number of lawyers that would do insurance work, now it's highly specialized. They are much more trained. That's what they're doing 100% of the time. It's much more complex. That's the problem with Bill 164. It was just so complex that even a law firm had to have one person just specialize in that one item.

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Mr Jim Brown (Scarborough West): You mentioned that you'd like to see more competitors in the marketplace. What suggestions would you have?

Mr McConville: One of the comments that Bill's alluding to was with OIC, if companies want to raise or lower their rates to stay in the marketplace, they can't. They've got this large bureaucracy they've got to appeal to.

One of the other problems that he was alluding to was major group plan carriers can use collateral benefits to lower the cost of delivery of their product, and the average insurance company representing the average person on the street cannot ask certain questions, such as "Do you have a group plan," and offer a discounted rating program to those consumers. So what's happening is the people that are working for large corporations who are members of groups, either real or synthetic, can get reduced premiums where the average driver on the street cannot get reduced premiums.

Mr Crozier: Good morning, gentlemen. One of your recommendations is to repeal the 5% retail sales tax. That would cost about \$260 million. I think it would be much more effective and widespread than the proposed personal income tax in that it would touch every automobile owner in the province of Ontario, and I think would give some relief to your industry. So I would hope the government might look at that.

I want to ask you about price, because that's the reason we're here, and I certainly support every effort of the government to repeal all the bad parts if not the total Bill 164 that sent prices skyrocketing, because we have reason to believe that prices in fact had stabilized, reduced a little, maybe increased a bit in that period between 1990 and 1993.

You're front-line people. When I go in to get my auto insurance renewed or I want to come to you as a broker to shop the market, price increases are of concern to me. If the draft legislation that we're looking at now increases prices, as it has been suggested, would that make your life more difficult?

Mr Boland: Not necessarily our lives more difficult; certainly to the consumer it would. There's no question, I've said for many years now there are two things that the public do not like to pay. One is income tax and the other is automobile insurance premiums, because their perception is that they receive no value for either of them, or very little value.

The story we constantly get is that "I've been driving for 15 years, 10 years, 20 years, 30 years," whatever it is, "I've paid \$800 a year all that time." These are the ones who've never had an accident yet they continually see, every renewal, a 5%, 7%, 8%, 10% increase applied to it. Those are the people that continually are calling us and saying, "Why are we paying this increase?" And in some cases, it's very obvious to justify to an individual, "Well, you've had several claims," whether they're comprehensive, physical damage, not-at-fault claims or whether they're actually at-fault losses, to be able to justify a premium increase. But to the motorist who has not had the claims, even a 5% increase is one that's not acceptable to the public.

Mr Crozier: I guess by not being acceptable, I'm suggesting that it makes your day-to-day relationship with your clients more difficult.

Mr Boland: More difficult and time-consuming to try to explain to them that it's a general rate increase and then the theory of insurance being that the premiums of many pay the losses of a few.

Mr McConville: If I could just add to that quickly, it's inevitable prices go up in every commodity and service. We have inflationary factors and what have you. I think in the case of this legislation, I believe that the public is not prepared to pay 5% to 7%. I think that's too high. I say that, though, in caution, because if Bill 164 stays, I know from experience that the industry's stating 12% to 15% or to 20%, it might go up. I can guarantee that's going to happen if Bill 164 stays.

The product is getting more expensive and it's getting unaffordable for the consumer, and it's getting unobtainable for the brokers to find coverage. I do believe the public doesn't want a price increase with this new legislation, but I also know that if we don't change what we currently have, it's unavoidable.

Mr Crozier: Certainly the government has more control over that, but on this side of the table we're going to do our best to help them do that. The point was that when you said it was inevitable that prices increase, we found it was different in 1990; actually, prices decreased. I was just trying to relate it back to Bill 68 when we worked at getting a price decrease. I hope we're able to do that this time round, although the evidence that's been given to us so far is that it's going to be difficult.

Mr Boland: Having made my comments, in the presentation I also said there are some areas of the automobile insurance product that are just uncontrollable. We have no control over the cost of imported parts and the devalued Canadian dollar as it fluctuates. We have no control, necessarily, over incidents that happened yesterday because of weather conditions with 50 cars and trucks involved in, I would suggest, a multimillion-dollar accident on the 401. A year ago we had a mild winter. If we have two bad winters in a row, with serious road conditions--

The other issue too is the policing and road safety. The London Insurance Brokers Association had a presentation at its breakfast meeting just yesterday regarding the establishment of automobile accident report centres here in the city of London, similar to what I understand has been set up in the Metro Toronto area. The indication is that as the individuals involved in accidents with no bodily injury--minor, just property damage--go to the policing authorities at these report centres, in actual fact fewer charges are going to be laid because there will be no investigating officer. It'll be merely Peter's side of the story as against my side of the story. Information's taken, vehicle damage is assessed, but fewer charges will be laid, is my understanding. If that happens, and less policing on the highways, obviously that all has an impact on how motorists drive, their habits, increasing accident frequency, costs are going to go up.

This whole issue is like jelly on a wall in many respects, because it's not just the government's proposed changes that affect the price of automobile insurance. There are too many other factors involved in the whole process.

Mr McConville: Some costs are controllable by legislation and changes in auto legislation. The other expenses of auto insurance are not controllable. They're never going to go away, and those can go up.

One comment about the pre-OMPP. Yes, rates did go down after OMPP, but I think that would've been short-lived, because with rehabilitation--we've heard some groups say that businesses have started since OMPP with rehabilitation. By and large they're all doing the best job they can for their clients, but there's a cost to that and we're seeing this happen. If Bill 164 didn't come along, we would've seen an increase under OMPP as well.

Mr Crozier: We'll never know, will we?

The Chair: Thank you very much, gentlemen. We appreciate your presentation today.

Mr Gerry Phillips (Scarborough-Agincourt): Mr Chair, just before the next presentation, a couple of things. Mr Wettlaufer mentioned 1% in legal fees, but the numbers I've seen are like 15%. Maybe Mr Sampson could provide us with the estimate of that. Also, I think the committee asked Mr Wettlaufer to

table a document he read from the other day. I haven't got my copy of it anyway, and it might be helpful for us.

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THOMAS SCHINBEIN

The Chair: We now welcome Thomas Schinbein Actuarial Services to the standing committee.

Mr Thomas Schinbein: Thank you, Mr Chair. Good morning, and thanks for the opportunity to address the committee on a few issues I saw in the draft bill. My name is Thomas Schinbein. I'm an independent actuary in London, Ontario. My practice is in the area of providing actuarial evidence. I provide calculation for people who have been injured, and I also work for insurers, so I work for both sides of an injury matter. I work on personal injury matters, fatalities and other issues where people are injured.

The current automobile insurance plan in Ontario implemented in 1994 created many inequities and complexities for Ontario residents. Automobiles are a key aspect of the economy in Ontario; therefore, a fair and basic auto insurance plan is in the best interests of Ontario residents.

With the introduction of Bill 164, the Ontario government became financially involved in the daily operations of an automobile insurance plan. This transferred part of the cost of an automobile insurance plan away from the owners and operators of vehicles to the taxpayers of Ontario. With Ontario's increased public debt and deficits, the full cost, in my opinion, of an automobile insurance plan must be transferred back to the private sector.

Under Bill 164, innocent victims lost the right to full recovery for their economic losses. In many cases, the no-fault accident benefits are being cut off after three years and therefore the innocent victims are left with no right to recover and have to end up on Ontario social assistance. Again the taxpayer of Ontario is subsidizing the cost of negligent drivers. I think the current draft legislation goes a long way in transferring the true cost of operating an insurance plan back to the private sector and back to the negligent drivers. This should end the taxpayers' subsidy for high-risk drivers.

Under the current draft legislation, the statutory accident benefits for non-catastrophic impairments have been reduced. The high levels in Bill 164 for accident benefits transferred the cost created by high-risk drivers back to low-risk drivers. The low-risk drivers who are innocent accident victims are forced to seek recovery from their own insurer. As the experience for good-risk drivers deteriorates, their premiums go up. This creates an unfair premium structure and takes away the financial incentive for poor drivers to improve their driving habits.

The catastrophic impairments under part V of the draft bill are very high for a basic automobile plan that includes a tort regime. The \$2-million aggregate limit, in my opinion, should be reduced to \$1 million, and for non-catastrophic, the \$447,000 limit should be reduced to \$75,000.

The duration restriction for medical and rehab benefits for non-catastrophic impairments should be eliminated, as it discriminates against accident victims by type of treatment needed for their unique injuries. With lower combined limits and no duration restriction for part V benefits, the basic automobile insurance plan is more efficient and flexible to meet the needs of accident victims.

In adopting a lower basic level of statutory accident benefits the current draft legislation could be amended to make optional part V maximum benefits. For example, you could have options to buy additional units of \$500,000 for catastrophic impairments and additional units of \$50,000 for non-catastrophic impairments. With the tort regime under the current draft legislation, the high-risk drivers would likely elect these additional no-fault benefits. As the higher statutory benefits would be optional, the insurers would have a better chance to price for them. Making very high limits of statutory accident benefits as an optional part of the plan will help reduce the cost for a basic plan, particularly for low-risk drivers.

The mandatory indexing of statutory benefits under Bill 164 represents a significant portion of the cost.

Mandatory indexing of social insurance benefits, such as workers' comp, has caused the costs to escalate, so one of the good features of the bill was making indexing optional. This again, for a basic plan, would help reduce the premiums for good drivers.

The current draft legislation eliminates many complexities of administering Bill 164. Annual mandatory indexing on numerous benefit amounts, limits and deductibles under Bill 164 is unnecessary and creates pricing uncertainty. The mandatory review of statutory benefits every two years by the minister and making more optional coverages for statutory benefits will enhance the price stability for an automobile insurance plan and provide an orderly method for updating the benefits. People who feel inflation is getting out of control would have the option to buy more coverage, and they'll do the indexing themselves.

The current legislation tort regime helps to restore financial fairness to innocent accident victims and their dependants. A fundamental right under other insurance products is to seek full recovery for your economic losses from negligent individuals and organizations. Taking away an innocent victim's right to full economic recovery discriminates against innocent victims. For example, an Ontario single mother with dependants who slips and falls in a shopping mall has the fundamental right to seek full recovery for her income losses. However, if instead the same individual is involved in a motor vehicle accident going home from the shopping mall, with the same injuries, the income loss recovery is limited to 85% of net. To innocent victims and their dependants, this is unfair.

Under the current draft legislation, innocent victims and their dependants are discriminated against by type of loss. Consider two individuals whose economic loss is \$500,000. For individual A, the loss is 100% income, and for individual B the loss is 100% medical, rehab and attendant care. Individual A's maximum recovery is \$425,000, while individual B can receive \$500,000. The financial loss is the same to both individuals, but individual A must subsidize the negligent driver for \$75,000. The current draft legislation must be revised to allow full recovery of income loss for innocent victims regardless of the source of the loss.

The current draft legislation does not contain a comprehensive definition of income. Many innocent victims of an automobile accident have employee benefits provided by their employers. An individual's income includes taxable and non-taxable benefits. The draft legislation must include a definition of income that provides for past and future employee benefit losses.

The definition of income loss needs to be revised to include both past and future income losses. This would be particularly important to young individuals who have just started their working careers. The definition of income loss in the draft legislation should be expanded to include losses that surviving spouses and their dependant children incur. Future economic loss in the death of the single income-earner for a young family can be significant. An example would loss of household services.

Full recovery of an innocent victim's past and future income loss should be based on gross income to avoid discrimination against innocent victims of automobile accidents. Victims of other accidents are entitled to seek full recovery on gross income. Basing recovery on net income will require the draft legislation to contain additional rules to govern situations where future income is not level, for example, promotions and retirements. How will the net income be recalculated? Use of gross income eliminates these complexities involved in tax calculations and would streamline administration of the plan.

The investment income generated by an income loss award is taxable, so in limiting the income loss recovery of an accident victim to net income, you will require an additional allowance for the tax that investment income would generate. If you fail to provide an allowance for the additional tax, this is just another loss that the innocent victim must finance on behalf of negligent drivers.

One approach to compensating for future tax liabilities would be to gross up the net income loss award, but this adds complexities to the settlement process. The use of gross income for future income loss is a more simple process and it already has built into it a tax allowance, because gross income is equal to net plus tax.

The collateral benefit rule under the draft legislation transfers a significant portion of the financial loss

caused by negligent drivers to innocent victims and their employers. With global competition reducing Ontario job opportunities, Ontario employers cannot continue to afford additional employee benefit plan costs from negligent drivers. Employers that cut benefits to control costs just increase the number of innocent victims and dependants from a negligent driver's action.

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The current draft legislation must explicitly include in the definition of an income continuation plan any benefits payable under a pension, retirement savings plan or superannuation to be excluded. Such retirement plans represent a form of deferred compensation and private savings which negligent drivers must not be entitled to receive a credit for. As the Ontario population ages, the cost of pensions will increase, generating more competitive disadvantages for Ontario employers who provide pension plans for their employees. Again, employers who cut the benefits to control costs are just increasing the number of innocent victims and dependants from negligent drivers' actions.

The current draft legislation is to prescribe a method for determining the present value of collateral benefits. Section 1 of the Insurance Act defines an actuary to be a fellow of the Canadian Institute of Actuaries. The Canadian institute establishes standards and regulates accepted actuarial practice in Canada. Under section 60 of the Insurance Act, the actuary must provide an opinion on the adequacy of claims liabilities in accordance with accepted actuarial practice. Use of accepted actuarial practice is also required under the federal Insurance Companies Act for those who are licensed federally. Since accepted actuarial practice is applied in determining the insurer's future obligation, for consistency the present value of the collateral benefits, for which the insurer receives credit, must be determined in accordance with accepted actuarial practice.

To the individual, the value of a \$400 weekly statutory accident benefit is the same regardless of which insurer provides it. In the case of pensions, the Ontario Pension Benefits Act has specified accepted actuarial practice as the industry standard for determining the value of an individual's benefit. The current draft legislation needs to prescribe accepted actuarial practice as the industry standard for determining the present value of collateral benefits.

In Ontario courts, the determination of an award for future care or for fatal injuries includes an allowance for the income tax payable on the investment income generated by the award. This allows the innocent victim to receive full recovery for the additional taxes caused by their losses. The lump sum award allows the individual financial flexibility and control over their future. The right to a lump sum award is available to innocent accident victims involved in non-motor-vehicle accidents.

To avoid discrimination against innocent victims by source of injury, the draft legislation must allow parties involved in a particular case to determine if a lump sum is the appropriate settlement option. Under the current draft legislation, the statutory accident benefits already are a structured settlement, and this restricts the parties to just one settlement option whether it's appropriate or not.

In mandating structured settlements, the current draft legislation sets out no controls over structured settlements. Given the recent collapse of Confederation Life, this should be of concern to the courts that must mandate a structured settlement. The cost of a structured settlement is not regulated under the current draft legislation. The current draft just takes on faith that a structured settlement will always be less than a lump sum award that finalizes the claim for all parties involved.

Prescribing circumstances for mandatory structured settlements creates additional unnecessary regulations that will require interpretation and amending. The objective of the draft legislation must be to reduce unnecessary regulations whenever possible to ease the administration of the act and reduce costs to taxpayers. The current provisions in the Courts of Justice Act have served Ontario residents fairly and must be left in place to ensure that innocent victims of automobile accidents enjoy the same fundamental rights under the law as other accident victims.

In conclusion, the current draft legislation moves towards a fair and streamlined basic automobile insurance plan that reduces the transfer of costs from negligent drivers away from the Ontario taxpayer.

To eliminate discrimination against innocent victims of automobile accidents, a 100% recovery for past and future gross income and dependency losses must be allowed.

The collateral benefit rule needs to be revised to reduce subsidizing of negligent drivers by innocent victims and employers.

Discrimination against innocent victims of automobile accidents by denying them the right to elect an appropriate mix of a lump sum award and a structured settlement, which is the right of other accident victims, must not be allowed. Thank you for the time.

Mr Sampson: Thank you very much for your presentation. We've heard from one insurance company, Zurich, which is somewhat concerned with respect to the swing more towards tort and less towards no-fault and how that could impact future costs. You're an actuary. You've no doubt had to cost the elements of tort in a plan. What's your response to their view that, add more tort, you're going to jack up the premium to pay for it?

Mr Schinbein: The difference, in my opinion, is that to get a settlement in a tort is a negotiated process. Both parties sit down and agree and figure out what the claim is worth and it's a compromise position. With the statutory accident benefit approach, having no-fault benefits, the problem I see on a lot of claims I work on is that after the three-year period, benefits are cut off, so no-fault means no coverage.

Mr Sampson: You wouldn't agree with their actuary's view that increased tort will necessarily mean increased premium levels plus escalating premium levels?

Mr Schinbein: No.

Mr Phillips: You suggest in here that high-risk drivers could purchase an optional benefit package that would give them additional benefits. Do people understand when they buy their insurance premium--my judgement is that a lot of people just assume they'll never be in an accident and have very little idea of what their benefits will be until it happens. But I gather from your experience that that's not the case. You believe that people know they're high-risk drivers, that they may very well get in an accident and are going to buy the higher-risk benefits. Has that been your experience?

Mr Schinbein: What will likely happen for people is that when they sit down with their brokers to go over the options available, they'll know by their ratings that they're a bad driver, which means they're more likely to cause accidents than be an innocent victim. What you're trying to do is reduce the level of statutory benefits, that you've got a smaller basic plan, and that will give you price stability. For the people who think they're going to be the cause of accidents and want the coverage, they can buy optional units on top of that.

Mr Kormos: Your observations about no-fault versus tort and what generates greater expense or the rate of increase are consistent with what Osborne said, with what Kruger said in the OAIB hearings, and what your colleagues in the actuarial business, like Mercer among others, say.

One of the big things that was flaunted during the course of Bill 68 and the introduction of the hierarchy, and no-fault taking supremacy in the hierarchy, was that this excluded lawyers from the system. I have a rather Shakespearean view of lawyers most of the time myself, but the bottom line is that what we've heard more and more is that lawyers are as involved in litigating for no-faults, although we haven't heard the numbers yet--well, not as involved but certainly significantly involved, just as they were in pursuing tort actions. There's a considerable legal cost that we haven't really had a handle on yet by the insurance industry and by applicants in terms of legal costs.

If there are concerns about legal costs--and I appreciate you're here as an actuary--wouldn't the way to address it be in the same manner as the Attorney General, Charlie Harnick, recently suggested, that is, to control the lawyers, not to deny people access to full recovery of damages?

Mr Schinbein: My perspective is that individuals, as residents of Ontario, have rights and they'll need lawyers to protect those rights. They need somebody to guide them through the maze of auto insurance,

because most consumers don't understand the product once they're in an accident, and there's a service they can provide. I think the assumption is that lawyers create the costs. Well, it takes two lawyers to tango. One of the lawyers is hired by the insurer, so the insurers have a direct bearing on the cost when they drag out the claim longer than it has to be. Two parties create legal costs, the injured person and the insurer.

The Chair: Thank you very much Mr Schinbein. We appreciate your presentation very much.

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LONDON OCCUPATIONAL THERAPY SERVICES

The Chair: We now welcome the London Occupational Therapy Services, Ms McGarry. Welcome to the standing committee on finance and economic affairs, Jacqueline.

Ms Jacqueline McGarry: Thank you very much. I appreciate the opportunity to speak with you about the draft legislation on auto insurance reform. I'm a practising clinician with 30 years' experience as an occupational therapist, the last 10 of which have been as a businesswoman running a private occupational therapy practice. Much of my work in the past six years has been with clients referred either directly or indirectly from insurance companies and lawyers as a result of injuries sustained from motor vehicle accidents.

As an occupational therapist, I am concerned about the functioning or performance of clients with respect to their self-care activities, their productivity in the home or workplace and their leisure pursuits. Occupational therapists use their skills to enable people to do whatever it is that they are motivated or want to do. We are client-centred and holistic in our approach. Although as a profession we're generally categorized in the medical model, our philosophy is that of enablement, and our client-centred practice fits most effectively in a community setting where we enable and facilitate, in the case of motor vehicle accidents, the client's return to a pre-accident functioning level.

We are educated to assess the whole person, including the emotional, psychological and spiritual as well as the physical aspects of the person. I have left with the clerk five copies of the Profile of Occupational Therapy in Canada, which outlines the competency expectations for Canadian occupational therapists if any of you wish additional information about our practice.

Based on my experience in the community, I would like to outline one or two concerns which I believe interfere with the client's recovery process and which I would like to see addressed in some way in the proposed legislation.

The first is the prevalence of an adversarial attitude between the insurer and the insured. It's a major concern for me in my practice, as I believe it is not conducive to the speedy resolution of injuries and interferes significantly with the rehabilitation process. In general, though not in all cases, there exists a suspicious and unhealthy relationship between the client and the insurer. In some instances this suspicion is justified, in others not so, but in neither scenario is this adversarial attitude beneficial to enabling the client to return to productive living as soon as possible, which is what we all want.

I note in the proposed legislation that there is a duty of the applicant to cooperate. I could not find equally clearly written a similar expectation placed upon the insurer. I suggest that such an expectation be written into the document outlining the duty of the insurer to work supportively, empathetically and cooperatively with the insured.

Other issues which seem to contribute to this adversarial attitude include:

Differing expectations of recovery. Claimants expect that they will be free of pain and be able to function at pre-accident levels, while the insurer may be satisfied when the claimant can do substantially all they used to do with adaptive devices or alterations to the claimant's lifestyle.

The lack of disclosure by the insurer of the options, benefits and resources available to the client under

the policy, and a difficulty in explaining clearly is another issue.

When the claimant feels they cannot understand or get the answers they require, many choose to consult a lawyer, and he or she tells the claimant what is in the legislation, what they are entitled to, which then places the insurer in the position of one who did not disclose these options to the insured. The perception is that the insurer is withholding legitimate expenditures or trying not to give the benefits to which they're entitled. This mistrust reinforces the adversarial approach to the claim.

The kinds of recommendations that I think might help us:

Policies should be written in simple lay language to facilitate explanation and understanding. I would think it would be a pretty easy thing to do for someone to translate the policies into lay language.

Insurers should take responsibility for reviewing the resources, the benefits and expected process of recovery thoroughly with the claimant, possibly several times at different stages in the rehabilitation process.

That there be a reciprocal duty to support, empathize and cooperate with the claimant by the insurer.

That insurers establish this supportive relationship at the beginning of the claim by providing any necessary services as soon as possible to enable the claimant to cope with the stressful initial period when many are overwhelmed as well as injured. These services, however, should be time-limited and reviewed or reassessed within a month. They often are not time-limited and the claimant becomes dependent upon them, especially those related to housekeeping and massage therapy sessions.

That a delay be established in seeking legal action, for at least six months to one year, so that the rehabilitation process can be established and begin to take effect. Many clients indicate that when looking back on their rehabilitation, they recognize that they made decisions in the early stages of their recovery which were coloured by emotion, revenge, anger, which they later wished they had not done. A six-month waiting period before taking legal action may assist the claimants in making wiser choices and more stable decisions. Prognosis and potential for recovery are also more accurately assessed at this time.

More direct discussion between the insured and the insurer as to the expectations of the outcome of intervention. Insurers may want to close the claim as soon as the claimant does his/her pre-accident activity, but the claimant may feel that it should not be closed until she can do it consistently, regularly, under pressure and without pain. The differing expectations must come closer together, and in so doing a more positive attitude is fostered.

The issue of costs of services is one that I can only talk about from my own experience in the community. Many clients with whom I work complain of having too many appointments to keep with professionals. They find it particularly difficult to establish a regular routine for their pacing and scheduling because of this. Many are exhausted with an increased level of activity due to appointments. The list of involved professionals is often between six and eight, several of them on a twice-weekly or weekly basis. Somewhere, it seems, the client has got lost in the services.

Those claimants who have either soft-tissue injuries or injuries of a more serious nature, but not catastrophic, have demonstrated, in my experience, the best results when the insurer has referred directly to health professionals and there is direct communication between therapist, insurer and insured. Initial intervention is timely, communication is direct and quick, and intervention can be paced to the requirements of the client at the speed of their own recovery. If the services are instituted early enough, much preventative work can be effected by close cooperation between professionals, education around positioning and energy conservation techniques, adaptation to the environment, loan or purchase of assistive devices, pacing and scheduling, and the facilitation of a positive attitude towards the recovery process which fosters motivation and success orientation within the client.

I understand that there are examples of effective cost-saving measures established by some insurance companies. Co-operators has a very clearly documented rehabilitation manual of expectations of

professionals and a direct referral service from the insurer to the professional. Guarantee Co of North America is piloting a project with occupational therapists as the initial assessors to establish the claimant's needs.

My recommendations on this area are:

To clearly outline treatment goals established with the claimant within one month of the accident. I don't think many people realize just how difficult it is for the claimant to understand all that's going on for them.

As direct a communication between client, insurer and professional as possible to facilitate and speed access to services and intervention.

Similar projects to those of Co-operators and Guarantee Co be piloted to provide outcome measurement statistics. Guidelines could then be developed to replicate the successful strategies. This could be done cooperatively with the respective professional associations that are also interested in evidence-based studies.

That occupational therapists be considered as the initial professional assessors to determine needs and services. The fee schedule guidelines from the Ontario Society of Occupational Therapists range from \$60 to \$100 an hour. A new schedule is due within the next months, but an initial assessment and two follow-up visits to educate re energy conservation, proper positioning, pacing, scheduling and monitoring of assistive devices in most soft-tissue referrals or simple orthopaedic conditions may cost between \$700 and \$1,200.

As an aside, and obviously from a very biased viewpoint, I believe the skills of occupational therapists in undertaking initial needs assessments are severely underutilized. In England, in Exeter, a physician who ran a regional children's centre used occupational therapists as the initial interviewers and assessors because of their holistic philosophy, their focus on function and their ability to assess not only the physical demands of the child, but the family dynamics, the barriers to progress and rehabilitation, and the emotional aspects of the problem, which were in turn shared with the team members prior to allocating the appropriate professional and resources for intervention.

I've already mentioned the time-limited and goal-oriented intervention and I note the inclusion of the treatment plan requirement in the proposed legislation. It is recommended, however, that the requirement to obtain written treatment plans be accompanied by reasonable time lines so as to avoid any unnecessary delay in establishing intervention and the recovery process. Health professionals will need to be efficient in writing their plans and the various colleges may well be able to support this in their regulations, or the associations in their documentation guidelines. The 60-day expectation for medico-legal report timeliness would not be appropriate in this instance. The Guidelines for the Client Centred Practice of Occupational Therapy indicate that a program plan involves not only the development of a strategy for intervention, including what to do in what order and when, but that it should refer also to the discharge plans and other contingencies such as referral to other professionals or agencies. It is this plan that will include the outcome measurement by which to determine whether the client has reached their goals. Consequently, I support the requirement for treatment plans from all professionals involved with the claimant.

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My concern, however, is that these treatment plans and goals should all pull in the same direction. Where many professionals are involved, there needs to be an integration of the care plans. It is one of the difficulties in community practice and it is costly with so many independent practitioners contracted. In my experience, to avoid duplication and manipulation, this can only be resolved by a team conference, well organized and efficiently chaired. It should include the client as an active participant to contribute to and agree to the final plan.

I support the reduction of the non-earner benefit for the first 26 weeks, as I came to believe that this was a disincentive to recovery. I believe, however, that a timely functional assessment to clarify abilities and

needs could facilitate a shorter recovery period and time-limited housekeeping to support the client in the acute stages when stress and strain on the tissues is contraindicated, together with time-limited and goal-oriented professional services, will significantly reduce costs.

I'd like to make a final point with regard to the brain-injured client. I will not belabour my disagreement with the use of the Glasgow coma scale, as you have had many submissions to justify its exclusion from the criteria. In its place, I would like to see a functional assessment in conjunction with neuropsychological testing.

Head-injured clients receive a functional assessment. I believe that it is more relevant because my own experience suggests that in some cases a mild head injury, because of the client's life role, family expectations or employment need, results in a severe functional loss while an apparently more severe injury becomes a mild functional impairment for the same reasons. For example, a senior executive with a mild injury which affects his judgement, decision-making and concentration, may be functionally more impaired than the landscape contract worker with a more serious injury whose job entails little responsibility, working as part of a team and primarily heavy labour. The assessment of this and the recommendations are best evaluated in the community by the client, the family, the employers and, as you might have guessed, an occupational therapist.

Intervention and retraining with a brain-injured client is time-consuming and costly. I do not have any statistics to indicate whether \$75,000 is adequate for the intensive and long-term intervention required. But my sense, from my experience, is that it will not be adequate. I would recommend, therefore, that additional statistics be gathered to establish an appropriate limit for clients whose major injury is brain injury, whether mild or severe.

As you will see, I've left the issue of the health practitioner status until last, for I know that most every professional who has appeared before you has requested to be so designated. I believe the case for the occupational therapists has been put to you by the Ontario society and by the Association of Canadian Insurers, and I ask that you give it serious consideration. Thank you.

Mr Crozier: Thank you, Ms McGarry. We in the past eight days, at least to this point, have probably heard from in the neighbourhood of 20 various kinds of rehabilitation centres and health care givers. I need you to help me put this in perspective. You've been in the business for more than five or six years, so obviously you have some experience back into the 1980s. What percentage of your clientele might have been accident benefit victims then and how were they referred to you at that time?

Ms McGarry: I think that you have hit a really important point because I will be the first person to let you know that I have seen a huge mushrooming of all kinds of rehabilitation services. In 1986 I maybe had one client who was referred by a lawyer. I was in fact the only practising occupational therapist in private practice in 1986 and now I can't count them on my hands and fingers, but also I can't count the number of other professionals in private practice, the number of rehabilitation companies. I believe that we've done very well under this legislation. That's one of the reasons, from my perspective, why costs are so high. There is a huge number of people involved with clients, and in many instances the assessments are done and redone and redone because nobody will trust or believe the results from one of the professionals.

Mr Crozier: So this huge mushroom would have happened in the last two or three years?

Ms McGarry: Certainly I've been involved in the past six years with insurance claims and my business has steadily grown. I wouldn't say that it has gone berserk the last two years, but it's steadily grown.

Mr Crozier: Not like costs under Bill 164--it hasn't gone berserk--but I agree with you.

Mr Kormos: Thank you kindly. We've heard from representatives of your profession across the province, this committee has. As well, we've heard from massage therapists and they're going to be spoken to this afternoon. Yet remarkably it was yesterday, when I was in Ottawa with this committee, that Royal Insurance, Ms Matthews, with disdain, dismissed what she called "feel-good treatments." She wouldn't specify what they were--it was a very cramped period of time, just like it is today--and I had to

draw some inferences.

I thought, "What could she be speaking about that she as a major executive with a major insurer would dismiss these so-called feel-good treatments that are escalating their costs such that they can't contain premiums?" I got a feeling she might be talking about some of the things that the massage therapists and even the OTs have been talking about. I'm sorry; if she is talking about massage therapists and OTs and other non-prescribing health practitioners, I say they're out to lunch. They just don't get it, because with the mushrooming of involvement of you and other non-prescribing health practitioners--and correct me if I'm wrong--haven't we seen people return to or as close to their original state as possible more promptly, getting back to work and being economically productive more readily, such that at the end of the day costs could actually be reduced?

Ms McGarry: I believe that is so, but I also don't believe that anything an occupational therapist does is primarily concerned with feeling good. That might be an outcome and it's one of the hopes that would be an underlying goal, because if a person feels good, they're much more motivated, they work much better and they are positive about their return to work.

Mr Kormos: Oh, that was just one of those dismissive labels as they try to devalue or diminish the type of work. It's nuts.

Ms McGarry: I understand that, but it's a very misunderstood one, because there are people out there who do feel-good things. You can do them in your community centre, but I'm not sure that you should pay money for it, unless it's an essential aspect of the treatment of the client who really needs some self-esteem and feel-good treatment.

Mr Wettlaufer: Thank you, Ms McGarry, for your presentation. I'd like to follow up on what Mr Crozier asked you in so far as the numbers of rehab specialists who have mushroomed in the last eight years are concerned. Do you feel that the designated assessment centres will be a solution to this problem?

Ms McGarry: I think that if they're involved with quality assurance, that if they will be looking at ensuring that quality care is undertaken, they may be.

Mr Wettlaufer: But you still feel that an occupational therapist should be brought in at the beginning as opposed to a DAC?

Ms McGarry: I think that the DAC may be more expensive in the long run, if you bring it in for every case. But there has been a lot of success with very early intervention--certainly in my own experience--where that intervention was directly from the insurer and it took maybe three or four--and this won't be for catastrophic injuries or for very serious ones--but for a good number of people who have car accidents, if you hit it right at the beginning, there's no need for them to become dependent on housekeeping, dependent on chiropractors, dependent on massage therapists. Those are the kinds of treatments--and I'm not criticizing the ability of those professionals--but they are treatments that seem to go on for years, and I don't see any goal orientation, I don't see any time limitation. In my own experience, if you can get in there quickly, if you can work really well with the physiotherapist and the insurer, it's a matter of three or four visits and you're finished, and that's less than \$1,500.

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Mr Wettlaufer: One last, quick question. You mentioned something that we have heard a lot over the last couple of weeks and that had to do with the number of rehab specialists or independent consultants an insured was sent to as a result of an injury and lack of progress. Is this epidemic?

Ms McGarry: No, I wouldn't say that it's epidemic. It's difficult to generalize from the particular, but I think it's something that could be a cost-containment issue if it is clearly defined at the beginning. There has to be somebody you trust to make the right decision, but what I find is that if people don't get the answers they want, either the client or the insurer asks for another assessment.

Mr Wettlaufer: Who asks for that?

Ms McGarry: Usually the insurer.

The Chair: Thank you, Jacqueline and London Occupational Therapy Services, for your presentation today. We appreciate your input.

CHARLIE VANVEEN

The Chair: We'll now move to Mr Vanveen. Welcome to the committee. We have 20 minutes to spend together. If you would like to make a presentation, we could ask you some questions following that.

Mr Charlie Vanveen: Members of the committee, I was a passenger in a motor vehicle which was involved in an accident on May 20, 1994. I was an innocent accident victim, being in no way responsible for the accident. That accident changed my life forever. As a result of the accident, I'm now quadriplegic. I am paralysed from the chest down and will be wheelchair-bound and totally dependent upon others for the rest of my life.

Prior to the accident, I was an avid bodybuilder, sports enthusiast, handyman and, most importantly, a productive member of society, being an electrician by trade. To add insult to injury, at the time of the accident I was making \$15.75 an hour, which wage would have increased within a week to \$29 an hour as I would have been receiving the journeyman's rate if it wasn't for the accident.

I was a victim in the car accident and again victimized by the insurance law in place at the time of my accident. I am victimized by the law in the following ways:

I will receive for the rest of my work life 90% of the net of \$15.75 an hour without any right to obtain more income, even though I would have been earning almost double that wage within a week of my accident. The law says that I have no right to sue for my financial losses which, over the rest of my life, will be substantial, despite the fact that I was not at fault for this accident. I have lost all other avenues for financial gain, such as overtime wages, other work possibilities, pay increases from increased training, general raises etc. I have no right to sue for my care costs and am stuck with whatever the government and my insurance company deem appropriate.

I have to pay for most medical equipment up front and go through a very time-consuming repayment procedure through the insurer who can deny any of my claims at any time. As an example, I purchased a power chair, but it took 10 months for the insurance company to pay for that chair. I have to pay for my own power bed, which cost \$4,000, and again it took me seven months to be reimbursed for that expenditure. I purchased a sports wheelchair for \$2,400 in June 1995 and I still have not been reimbursed for that expenditure.

I've been trying to get a van, so I can become more independent and I've been fighting with my insurance company for a year and a half and I still have no van. I had to pay own home care worker \$3,000 per month because the insurance company is late in paying these expenses for up to five months in a row.

Before this accident, I was a fully independent person about to make some \$5,000 per month with my entire future in front of me. I am now confined to a wheelchair for the rest of my life and will make \$1,600 per month for life and have to live on credit and family loans in hopes of reimbursement by the insurance company.

I am being victimized by the insurance company. I not only have to deal with the emotional, financial and physical ramifications of this accident but have to swallow what little pride I have left to plead with the insurance company to pay for the expenses and allow me enough home care to pursue a relatively active life.

I am stuck in a wheelchair for the rest of my life and stuck with the insurance scheme that was in place at the time of my accident. Nothing that this government will do will in any way, shape or form help or

change my circumstances. I wish that this law could be made retroactive, but I know that it cannot and will not.

I am here not to represent myself but to represent all those people who are out there who will become innocent accident victims, some who will sustain injuries as devastating as my own. I am here to speak for them because I honestly believe that I am the best person to understand the problems with the present system and some of the proposals with the suggested new system because I have to live every day with the consequences of what my accident and the former government have done to me.

I am not a sophisticated person but have had an opportunity to review the proposed legislation. Although I do not understand all of it, there are some things that I do understand and which I think need to be changed. Those are as follows.

I see no reason whatsoever why an innocent accident victim should only get 85% of their net income. I see no definition of net income. If I were involved in my accident and this proposed legislation were in effect, what does 85% of net income mean? Does it mean I would only get 85% of my \$15.75 an hour, 85% of my \$29 an hour I was going to receive or 85% of the money I might have earned in the future, which would have been more than \$29 an hour? Why 85%? Why should I, as an innocent accident victim, have to pay 15% when I did nothing wrong? Although I would have earned a good wage at \$29 per hour, there are many people who are involved in accidents who would find it financially devastating to lose 15% of their wage. Why make the innocent accident victim pay? Although I think that it is a step in the right direction to allow people to sue for their lost wages, why 85% of the net income?

I do not understand why there should be a \$15,000 deductible. It is like punishing me for being involved in an accident which is not my fault and which I did not ask to be involved in. I understand why there are deductibles on property damage when somebody causes damage to their own car, but if somebody caused damage to my car, I would not be responsible for that deductible, so why should I be responsible for a deductible on my injuries when I did not cause them? If there has to be a deductible, it should be certainly less than \$15,000.

I applaud the government for putting in a provision that I could sue for 100% of my medical expenses and care expenses. Under the present law I have no such right.

Please do not make the innocent accident victims of the future become victims of the insurance system like I am. This government has the opportunity to make things fair, and fairness requires that innocent accident victims be fully compensated for their losses. Thank you.

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Mr Kormos: Thank you. I spoke with Mr Vanveen quickly outside. Bear with me. I'll top it up with a question just to keep the Chair--

The Chair: Under control?

Mr Kormos: --complacent and feeling that he's still in control.

Mr Vanveen, in my view we've had far too little consumer victim participation. That's just the way it's been--it's only been two weeks--but here you are today. Let me take advantage, yes, of your appearing here and your presentation, because we've heard from advocates of pure no-fault and high-emphasis no-fault who have talked about the nasty lawyers--and I'm inclined to agree, lawyers can be avaricious and expensive--and about the delays in the court system and litigation.

But here you are, and I appreciate there are some people in my own party and in my own caucus who are advocates, as I am not, of the supremacy of no-fault over tort. They explain, "What about the person who isn't the innocent accident victim?" Here we are, and you presented the scenario you found yourself in, but for four and a half months in terms of your accident you would have been under Bill 68 where--and I concede this. If one's going to suffer as an innocent victim catastrophic injury as you have, I'd far sooner have it done under Bill 68 than under 164 or under the legislation that's being proposed.

So I say to my committee members, here's Mr Vanveen. Here's the person and others like him that the advocates of tort have been talking about, who have been dismissed on occasion so readily as being special-interest, as lawyers who want to line their own pockets, as people who want to see the maintenance of a court system that can sometimes be unwieldy.

I defy anybody, and I tell you in a non-partisan way, to sit here with Mr Vanveen and explain to him why he, as an innocent victim, should not be entitled to recover the full cost of all of his injuries, why he shouldn't be entitled to be restored to the position he would have been in, why he shouldn't be entitled to be compensated for what he could have been. He's come here with grace that I'm not sure I could muster, explained to you that he's had his future stolen from him, the potential for pursuing his trade, of earning that income and all the things that would come with that. He's had that stolen from him.

While Bill 68, notwithstanding the threshold, acknowledged the level of injury Mr Vanveen has, Bill 164, with its supremacy of no-fault, denies that to him, and this bill denies that to him. We can talk about spreading the premium dollar around, but why should Mr Vanveen be denied full compensation so that guilty or at-fault drivers can receive a bigger chunk of the pie?

We've got to establish some priorities here and we've got to accept some very basic principles of justice. Innocent victims should not be the victims of 15%, that is to say 85% of net income, should not be the victims of having their income potential fixed at the point it was when they were injured, should not suffer the indignity of being told that they have to utilize no-fault benefits before they're entitled to access to any other tort.

Why should this young man suffer at the capriciousness of actuarial studies and profit interests? I can't think of any damned good reason and I implore the rest of the committee to reflect on the comments that have been made about tort. Tort is designed to make sure this young man receives justice, and tort has been denied.

Mr Bob Wood: I'd like to ask you to make a choice. What you're really advocating here, and certainly from the victim's point of view you're right, is the pre-1990 system, where you got full compensation. Let me give you an unpleasant choice. It would be helpful at least to me if you were to give some guidance.

If we said to you as a victim, "We'll give you some money for pain and suffering or you can get full compensation for your losses," in other words, you don't get anything for the pain and suffering, which is very real and it's going to be with you permanently--we understand that. If we said to you, "You've got to choose between getting money for pain and suffering or getting full compensation for the actual expenses and loss of income," which would you choose of the two?

Mr Vanveen: You're telling me I get a choice between one or the other?

Mr Bob Wood: I know you don't want to make the choice and neither would I. I'd like to not have to ask you the question, but we do get down to some of these choices. I just wondered, from your perspective, which of the two would you choose if you had to choose one or the other? In other words, you get partial compensation and money for pain and suffering, or you get nothing for pain and suffering but you get full compensation--

Mr Vanveen: The only way the pain and suffering would be a benefit to me is if it was a very substantial settlement, because then I could make a wage earning off of that settlement. I could invest it and that investment would be able to pay for my home care, would be able to pay for my medical expenses. If the settlement was not made large enough, then I have no other choice but to say I need to be protected for my home care and be protected by my medical expenses. Those would be my priorities.

Mr Bob Wood: I want to see if I've got correctly your answer. I think what you said was, if you had to choose, you would rather forget being compensated for pain and suffering and get full compensation for what you actually have to pay out and the actual wage loss. Did I correctly pick up what you were saying?

Mr Vanveen: Yes.

Mr Bob Wood: Thank you. That's my question.

Ms Castrilli: Thank you very much, Mr Vanveen. I really do appreciate your being here. On behalf of my colleagues, I applaud your courage and your clarity. It's ironic that your accident occurred just four months after the introduction of the new regime. Had you had an accident prior to January 1, 1994, under Bill 68 or OMPP, you in fact would have been able to recover for loss of income through the tort system because it did allow for some limited right to sue. Of course, it also allowed for access to medical and rehabilitation costs, which obviously you have incurred.

I don't have any questions for you. I just want to go on record as saying that you are an inspiration and I wish there were something the system could do to change the very difficult situation that you're in.

The Chair: Thank you very much, Ms Castrilli, for expressing those emotions, which reflect those of the committee as well.

Thank you very much for coming in, Mr Vanveen. We appreciate your presentation.

MIDDLESEX INSURANCE BROKERS ASSOCIATION

The Chair: We now welcome the Middlesex Insurance Brokers Association: Mike Carberry, who's president of the Insurance Brokers Association of Ontario; Bob Carter, who is executive director of the Insurance Brokers Association of Ontario; and Mr Dan Danyluk, with the Middlesex Insurance Brokers Association.

Mr Dan Danyluk: First of all, my name is Dan Danyluk. I'm a territory director for the Middlesex Insurance Brokers Association and a partner in Crawford and Danyluk Insurance Brokers of Delaware, Ontario.

To my right here is Michael W. Carberry, who is the president of the Insurance Brokers Association of Ontario and also a principal in Carberry Davis Insurance Brokers Ltd of Oakville, and to my left is Bob Carter, who is the executive director of the Insurance Brokers Association of Ontario. These gentlemen are here to assist me in the event that you do have questions, not only about this presentation but about the presentation made on behalf of the Insurance Brokers Association on February 20.

Some general comments, I guess, on the proposed reform. The Middlesex affiliate of the Insurance Brokers Association of Ontario represents 19 independent insurance brokerages, 73 licensed brokers and their support staff. Since the introduction of Bill 164, our primary concern has been the affordability, availability and understandability of an insurance product that provides generous benefits regardless of fault.

Regarding affordability, since 1993, we have seen double-digit annual premium increases, primarily, we are told, because of the generous benefits payable under Bill 164. In addition, we have heard of a significant increase in fraud created by a system lacking in adequate checks and balances while supporting a concept of entitlement rather than indemnity.

We note with interest the Ontario Medical Association's investigation into various practitioners recommending additional treatment through owned or affiliated facilities. We commend them for taking this step to assist in controlling accident costs.

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We support your initiative to discourage fraud and control costs. However, we do not believe that premium increases of 7% to 8% a year, as anticipated by the Insurance Bureau of Canada, while substantially less than their projections on Bill 164, constitute stable pricing. The insurance companies set pricing and we, the independent brokers, suffer with the consumer when price increases are

unreasonable. The costs of automobile repair, generous medical benefits and increased fraud have a strong impact on the cost of claims. However, we believe that insurance brokers, insurance companies and the Ontario Insurance Commission and all others involved must work together to control costs.

We must ensure that automobile repairs are completed at the lowest possible cost, without deductible rebates to the consumer; that insurance companies be permitted to manage the claims process more strongly to control not only physical damage claims but also medical and accident benefits; and that legislation provide substantial fines for those who drive without insurance so that they do not look upon their fines as cheap insurance. All stakeholders should be charged with the responsibility to eliminate fraud.

The vast majority of Ontario drivers who pay their insurance premiums regularly and act responsibly tell us that they are tired of paying for drivers who abuse the system. We must find a way to stabilize rates while providing adequate coverage and proper service to Ontario drivers.

Regarding availability, over the past three years we have watched insurance companies come up with ways to write less and less auto insurance, in spite of the "all comers rule." While some companies quietly ask brokers to send their business elsewhere, others found a unique way to reduce their automobile writings: by cancelling brokers' contracts.

When brokers are cancelled, severe dislocation occurs. Any consumer who has had any kind of incident, even though they may have been insured with the same company for over 20 years, will lose any preferred rating or forgiveness features when moved to a new carrier. For example, most companies allow one accident as a forgiveness feature while maintaining a preferred rating. If a broker is forced to place the business with a new company, higher zero rates would apply.

Of course, no business wants to continue supplying a product that consistently provides a negative return, but automobile insurance is compulsory and the insurance industry as a whole must work with government to deliver the product to Ontarians. We have learned from a number of insurers that your proposed program provides an outline under which they would be willing to write automobile insurance. This attitude of wanting to do business must be encouraged so that consumers actually do have a choice of product, insurance broker and insurance company.

In terms of understandability, the complexity of the current accident benefits regulations under Bill 164 makes it extremely difficult for all of us involved in the industry to adequately explain consumers' rights and responsibilities. This, of course, did nothing for consumer confidence. Your proposed legislation reduces the regulations by about a third, I think. However, we would like to see it simplified even further so that the automobile insurance product can be more easily understood by both the consumer and the distributor.

The Middlesex Insurance Brokers Association strongly supports our provincial association and your ministry's efforts to develop road safety initiatives that will lower accident costs by reducing accident frequency and severity.

Discrimination: We strongly support the ability of individual brokers to obtain sufficient information on collateral benefits, income and occupation so that underwriting rules for automobile policies are the same for individual subscribers as they are for those who subscribe to group plans. The individual consumer must have the same ability to obtain competitive automobile insurance.

In conclusion, the industry must provide a product that is affordable, available and understandable. The consumer is tired of double digit increases and will not accept a 7% to 8% per annum increase. The product must be available; therefore a business climate must be created where insurance companies want to write automobile insurance. The product must be simplified so that everyone involved can understand their rights and obligations under the contract.

We support your initiative. We suggest that further modifications be made, if necessary, to control costs while providing adequate basic coverage to Ontario's consumers.

We, as brokers, are more than prepared to offer any and all additional coverages tailored to the individual consumer's needs. We are committed to working with you towards achieving that goal of returning stability to the insurance marketplace.

Thank you for allowing us to speak to you today. We're more than willing to answer any questions you may have.

Mr Wettlaufer: Thank you, gentlemen, for your submission today. You mention on page 3, "...we believe that insurance brokers, insurance companies and the Ontario Insurance Commission and all others involved must work together to control costs." We heard over the last two weeks about a possible adversarial situation which has been allowed to develop between claimant and insurer. Is there an adversarial relationship building up between insurer and insurance broker? Has it built up?

Mr Michael Carberry: "The kettle is warming," I think would be the way to describe it. The insurance companies are looking at how they're going to control costs and all the different factors in the development process, and brokers are just part of that equation. I think they are seriously looking at the commissioning structure. We have, over the last 25 or 30 years, seen our portion of the pot reduced and yet we've worked hard to maintain and do our job well as the brokers, as the purveyor of the product. I don't know whether insurance companies have reduced their factor quite as much as we have. I think probably 25 or 30 years ago it was a 20% commission on auto and we're down at 12.5% to 10% with Facility. We're down to \$25 in some cases as our cost of developing the product. But to go back, yes, I think the pot is warming on that issue.

Mr Wettlaufer: Two weeks ago I asked the Insurance Bureau of Canada if it had reduced its administration costs over the last 10 or 15 or 20 years and I have not yet had a reply. Could you give me an indication of what you believe their reduction in administration costs have been over that period?

Mr Robert Carter: I'll try that one. I don't think we can speak for them, but I can recall, back in the early 1980s, expense factors of insurance companies were noted as being in the 40% range. I think they're down into the 30s now and there are some companies in the 20s. I think, to make the product affordable, as an industry we have to get the cost of the product into the low 20s, or around 20%.

Mrs Margaret Marland (Mississauga South): Some of the concerns that have been brought to us certainly involve the way claims are handled. We've had frankly some absolutely brutal examples: People requiring six to eight assessment in a year; a woman in a wheelchair in Sault Ste Marie who had to get on an air ambulance several times in the last eight months because somebody didn't believe the last assessment or the last evaluation. I'm wondering if you have any advice to us in terms of the role that government can play in dealing with the way investigations of claims take place, who's doing it, who's involved, so that the victims don't become victims again and again and again. They're just appallingly disgusting stories, in my personal opinion, of what these people are subjected to.

Mr Carter: I think one of the things that happened in 1990 when we went from a tort system to a no-fault system in the industry--and I don't say all, because some of the companies have done a very good job--but some of them did not change their stripes. The comment I heard at the time was that they should have taken a segment of their claims adjusters and sent them to school so that they would handle claims the same way your group insurance provider from your employer handles claims. You're on the same side, you're trying to find the best way to get a person healed and back to work or compensated.

I think that process has been very slow as far as changing from an adversarial role by some companies to one of assistance to the consumer to accomplish their needs is concerned. As an industry and as a government, I think we have to work very, very hard to get that change in attitude accomplished as quickly as possible.

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Mr Crozier: Thank you, gentlemen. We're down to the last day of our hearings, and in fact, as I look over the list, I think you're the last representative anyway of the insurance industry. You've given some very generic comments, but we haven't yet in two weeks I think heard some of those hard solutions we

need to the problem that we have.

I need your opinion on this. You've said without any question your primary concern as brokers is affordability, availability and understandability. There may be others, but one that isn't in that list is fairness.

We heard a young man this morning. As Ms Marland just said, we've heard from people who have had difficulty with insurance companies, albeit I think there must be many, many more out there who haven't appeared before us who we could reasonably assume have had good relationships.

We want to do what's right but we want to keep the price down. Do you think that's possible?

Mr Carberry: I think the restoration of tort would bring some fairness back into it because you don't have insurance companies that can basically hide behind no-fault provisions and just look at that. Everyone seems to think that the courts and lawyers are bogeymen and I don't necessarily think all of them are. There are some.

Mr Crozier: We know one or two.

Mr Carberry: As Mr Kormos has said, there are a few, but for the most part I think the ability of someone like Mr Vanveen to go to the court for a fair response is a prudent course of action. I think this bill does move towards that. You'll never solve all the problems and all the situations, and if you try and reach that level, you'll never get anywhere. But I think you have to and our view has always been to try and do the best you can for everybody. We as brokers have always tried that, and I think the tort will move towards that.

Mr Phillips: Just to try and follow up a little bit on that, I'm not sure I heard the numbers right, but my feeling is the industry is around a \$5-billion industry. I gather your fees are roughly \$500 million of that, I assume. I gather the insurance industry--I'm not sure I heard Bob right on that, but I thought he said 20% of it is the insurance industry, which I gather is roughly \$1 billion of overhead.

Mr Carter: For the companies?

Mr Phillips: Yes.

Mr Carter: I think it is about now. We are about 10% to 12% and the companies themselves and their costs take it up to over 30%.

Mr Phillips: Then if the lawyers are involved, that's \$400 million. I'm just saying, in terms of the benefits to the people who pay the premiums, we now have got a \$2-billion overhead and a \$3-billion benefit to the people who are paying the premiums. Are those numbers right and is that a fair way of looking at it?

Mr Carberry: There's a delivery cost of any product. It doesn't matter what it is. I don't think saying is 10% from a broker point of view too much or too little--we are running businesses and have costs in operating our businesses, the same as insurance companies do.

Mr Phillips: Of course.

Mr Carberry: I really don't know. I don't think my colleagues could say whether 40% as a gross amount in the delivery process is far too high.

Mr Carter: I think what we're working towards as an industry now through various committees is to get the combined costs down to the low 20s and 20% range, and that's been a struggle. With the changes in automation, it looks like it's going to be easier. We have to eliminate duplication. There's a whole bunch of things the industry has to do.

Mr Phillips: Personally, I put the \$400-million lawyer fees in it, because the consumer's got to buy

\$400 million worth of legal services to obtain their benefits, and, Bob, your view is you've somehow got to get the total down to 30%.

Mr Carter: Yes, but I think if the system is simplified--and that's part of our presentation; it has to be simpler--I don't think the consumer will need that degree of legal advice in order to collect their basic benefits. Legal advice would only come in in more serious situations. What we're finding under the current bill is people are seeking legal advice even at the bare bones bottom end because it's hard to determine what they deserve and what they should be receiving. It's just too complex.

Mr Kormos: In reference to the relationship, or lack of it, between insurers, the private corporate insurance industry, and brokers, you talk about the pot warming up. Down where I come from, down in Niagara region, Golden Horseshoe, I think the pot's boiling over. I have been getting calls from brokers throughout that part of Ontario. Some are reduced to being able to represent only one insurance company, and they of course are deathly afraid that anybody in the community is going to find out about it, because if the consumer knew they only had one company, the myth of shopping for the best rate would be blown all to hell. How can you when you've only got one company?

I've had calls from brokers who have asked me to advocate on behalf of claimants, because they don't want to be seen as advocating for the insured because they don't want to be put into a bad light with the insurance company, to the point--and they don't like having to do it, but they're betraying their customer and not fulfilling the traditional advocacy role that most, if not all, brokers did in terms of difficulty about getting satisfaction and settlement of claims. They've been asking me, and I'm sure other MPPs and lawyers and so on, to do it for them, because they don't want to be cancelled by that insurer.

I appreciate that this committee wasn't specifically struck to focus on that. I know Mr Sampson is familiar with the problem, and all of us are anxiously waiting to see whether there's going to be resolution coming from the government or whether the industry will resolve it itself.

The whole business of uninsured drivers--and some Metro Toronto data, I think, that were contained in some of the material talked about, at least in cases that were investigated, 20%. I'm not about to dispute that. It's going to be hard to track, but not impossible to track.

The sad reality is, though, it's not just scofflaws driving without insurance. One can live with that--not live with it, but one can understand that. I've got a feeling it's working people, it's seniors, it's a whole lot of people who otherwise wouldn't be breaking the law, because they perceive and their budgets aren't enough to accommodate increasingly higher premiums. IBC, of course, talks about 7.6%. Zurich, the second-largest insurer in Ontario, automobile, talks about twice, three times that in terms of premium increases with this package.

The whole phenomenon of pink slips, of course, because every tavern, and on occasion--you know, this is investigative work as an MPP--I have to visit taverns in small towns across Ontario, and there hasn't been a tavern, or scarcely a tavern, I've been in that hasn't had blank pink slips for sale, which of course is what scofflaws use to protect themselves when they're stopped by the police and they ask to see the pink slip. Obviously, these pink slips show up all over the place. There have been a whole lot of prosecutions under the Criminal Code for uttering a forged document, which is the offence.

But the question I asked the other day is, where the heck do these pink slips come from? Because nobody's suggesting that they're counterfeit pink slips. They're bona fide pink slips that are being forged. Well, it was answered. They come through brokers' offices.

Why isn't there a better regulation and control, be it numbering, be it identification of the source of a pink slip in terms of which broker's office it comes from so that maybe some brokers can be prosecuted, assuming they're not victims of mere theft or break-and-enters, for these pink slips showing up in the underground?

Mr Carter: I think that was an awfully long question.

Mr Kormos: It sure was, sir.

Mr Carter: But you've been doing that all day. Our experience has been the pink slips in most cases have been stolen. I think there was one where we found out it was the cleaning people at night.

Having said that, we're working with the government and the road safety, and believe it or not, we started this under your government, where we're going to look--

Mr Kormos: I don't disbelieve you.

Mr Carter: There are one or two things that happened that weren't bad.

Mr Kormos: Bill 40, the employment equity, pay equity.

The Chair: Nice one.

Mr Klees: He's provoked me now, Chair.

Mr Carter: We are working with the current ministry on getting the computer synchronized between the industry and the police so this can be checked on line in police cars, and we're also working at a strip or something on the pink slip so that it can be checked and identified very quickly, but it's a long process to get--

Mr Kormos: A system where there's no insurance, no validation sticker in the insurance year instead of when you commence insurance, coordinated with your sticker year, might be one way of approaching that. That's why we should be travelling, or at least making phone calls to BC to find out how a successful public auto insurance system works, because that's how it works there.

The Chair: Are you suggesting the committee travel to BC, Mr Kormos?

Mr Kormos: No, but I'll make the phone calls, and I'm prepared to fly out there at my expense. Aren't you?

Mr Carter: I don't think we want to get into a debate on how successful or unsuccessful BC has been. It has been up and down far more than Ontario has.

Mr Kormos: I've already challenged Mr Sampson to a public debate anywhere, even here in the city of London, on the issue of public auto insurance.

Mr Sampson: Why don't you debate the other candidates from the NDP party?

Mr Kormos: I'll be doing that in my own right, Rob.

Mr Sampson: Well, I haven't heard any debate and I haven't heard you challenge them yet.

Mr Kormos: I'm expecting to win that one, as well as the one with you, Rob.

Mr Sampson: I don't know, Peter.

The Chair: I'd like to thank the Middlesex Insurance Brokers Association for their presentation today. We appreciate your input. Thank you very much.

There being no further business to bring to the committee prior to lunch, we will recess until 1:20. I would ask the members to be back promptly.

The committee recessed from 1211 to 1320.

KPMG PEAT MARWICK THORNE

The Chair: We welcome KPMG Peat Marwick Thorne. Mr Hoare, thank you very much for joining us. We have 20 minutes together. If you'd like to make a presentation, we can fill any remaining time with questions. Please proceed.

Mr Jim Hoare: Thank you. I appreciate the opportunity to come to speak to you today. My name is Jim Hoare. I'm a partner at Peat Marwick Thorne, responsible for the forensic and investigative accounting practice here in London. One of my responsibilities is to look after calculations of damages in motor vehicle accidents and other claims, and I've prepared in excess of 300 calculations under the former tort system, Bill 68 and Bill 164.

I want to touch briefly on probably six areas today. The first is a fairly minor area. Subsection 70(2) of the draft regulations talks about insurers and insureds having access to income tax assessments. I believe that should be changed; it should be the personal income tax returns and corporate income tax returns with respect to self-employed individuals. The income tax assessments simply don't provide enough information to accurately calculate any losses. Secondly with respect to that issue, the regulations talk about the insured providing audited financial statements. In my experience, in excess of 80% to 90% of self-employed individuals in this province don't have audited financial statements. There's no requirement for audited financial statements, and I think that's simply a little bit restrictive. I think the word "audited" should just be removed.

Secondly, I want to talk a little bit about the concept of gross and net income. In the draft legislation, the way it is now, there is a definition of "net income," which I appreciate. As part of the definition of "net income," a term "gross income from employment" is referred to but there is no definition of "gross income from employment." I think there should be some additional information to define "gross income" to include such things as benefits, to include such things as pensions, but with respect to self-employed individuals it should probably exclude such things as interest income on shareholders' loans. So I think there's some clarification that's required.

Also with respect to the distinction between gross and net income, in theory I agree with the concept of calculating damages on a net income basis. There are significant practical problems in a calculation of net income. To be fair to an innocent victim of a motor vehicle accident, if you're going to calculate benefits on a net income basis, you have to take into consideration a gross-up factor for tax purposes to put that person in the same position he otherwise would have been. A gross-up for income tax purposes requires three or four key assumptions, including an assumption with respect to interest rates, inflation and income tax, and when you're dealing with a fairly young claimant those assumptions can be very speculative, given that the term of the calculation could be over as long as 40 years. If we looked at it on a gross basis, those assumptions would not have to be made, so the calculation would be simplified. To do it on a net income basis in theory makes some sense, but I don't believe that in the long run you would have a fairer calculation or a calculation that would necessarily reduce the claims.

With respect to the 85% of net income, I don't see any economic justification for a calculation on 85% of it. All other calculations of damages that I'm involved in are done on 100% recovery of economic losses. I just don't see any justification with respect to that calculation.

With respect to future income loss, I did not see much reference in the draft legislation with respect to guidance in calculating future income losses for students or for dependants of deceased claimants. In my experience in those types of situations, certain problems arise that are different than normal employed individuals, and I believe that in those two instances there should be some reference in the legislation to clarify the calculations of those future income losses so those people recover their full economic loss.

Indexation of benefits was brought in under Bill 164, and I agree that there should be some indexation of benefits. I believe there could be a cost saving in that this indexation could be done on a basis of optional coverage. I see that as a similar situation to property damage insurance policies where coverage is offered on an actual cash basis or on a replacement cost basis, and it seems to me that costs could be saved somewhat by making that an option as opposed to providing it to each of the claimants.

Finally, in the section with respect to structured settlements, it appears to me that the legislation is going towards promoting structured settlements, which in some cases I believe is a good thing. Structured

settlements for certain claimants make a lot of sense, but I don't think it should be so restrictive as to try to force in structured settlements, because in many cases a structured settlement is not the right course of action for all claimants.

I'd be pleased to answer any questions.

Mr Crozier: Good afternoon, and thank you for your presentation. We haven't discussed a lot about structured settlements over the past two weeks of these hearings, yet they've been brought up on occasion. Could you elaborate for the committee those instances, or perhaps give examples of where you think structured settlements would be appropriate, and then perhaps of those where they are not?

Mr Hoare: Certainly a structured settlement is very appropriate for claimants who do not have a lot of sophistication from a financial standpoint, may not be able to manage their money properly, and a structure simply forces them into a periodic payment which presumably puts them back in the position where they otherwise would have been. But for people who are financially responsible, who have some sophistication in dealing with their financial matters, a structured settlement is somewhat restrictive and doesn't provide them enough leeway to financially control their future.

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Mr Crozier: So this would be something where perhaps the court, with either evidence or advice, may then be able to make a decision that would be appropriate to what you've suggested.

Mr Hoare: Yes.

Mr Phillips: One of your recommendations is that there be an opportunity to purchase options, and one of your suggestions was on indexing benefits. This is one of the challenges for the committee: Just what should be the fundamental package, and then what should be the optional package. Today we've had conflicting recommendations. I think from the start the mutual farm group suggested very few options because they felt that left them vulnerable. You're suggesting options on indexing. You think that not indexing benefits and having that as an option is more important; you would not suggest having as an option 100% of your net income and leaving it at 85%?

Mr Hoare: I would suggest that's possible for the no-fault benefit portion. I think that would be reasonable, because I see that 85% as a type of co-insurance. If I want to purchase 100% benefit, then I should be able to do that at a cost to me. I don't think, from recovery of innocent motor vehicle accidents, that should be an option.

Mr Phillips: Okay, but the indexing should be an option. Are there any other things that are currently mandated that you think should be optional or vice versa?

Mr Hoare: No, I agree with the draft legislation in terms of the ability to purchase additional no-fault benefits. That makes sense to me.

Mr Phillips: In your experience, and I gather you periodically deal with individuals as well as companies, when they've had an accident and are now trying to find out what benefits they're entitled to, do you find most individuals have a good idea of what was in their policy?

Mr Hoare: No, they don't.

Mr Phillips: What per cent would know what was in their policy?

Mr Hoare: Oh, it's hard to say. I would say probably less than 20% would know specifically what was in their policy. I think that's a different issue. Certainly, education with respect to what's in a policy is a big issue. I think people see this as simply a cost issue, where it's really a fairness issue and a cost issue.

Mr Phillips: I think that's one of the things we'll wrestle with, Mr Chair, just what is the basic package, because I suspect a lot of people are like perhaps I am, which is just, "I need insurance; please get it for

me." I appreciate your experience of currently relatively few. You believe that's changeable, though, I gather from your comments.

Mr Hoare: Yes, I think it is.

Mr Kormos: You've obviously canvassed and you're obviously familiar with the two earlier bills that purported to constitute reform, Bill 164 and before that Bill 68. You've noted the current proposal for no-fault benefits as well as the tort recovery. It's interesting that the tort recovery is limited to the same amount, in terms of economic loss, 85% of net, as is the base no-fault benefit, because of course Bill 164 changed the no-fault benefits to 90% of net, which I trust in many cases amounted to less than 80% of gross.

Now, 85% of net is even lower than the 90% of net that was contained in Bill 164. But from what you're saying, my impression is, and there's this competition almost between no-fault and tort, that you would perceive that the base coverage ought to be tort and then it's the no-fault benefits that could be topped up or added on to by the particular insurer. Is that fair? I realize that's a pretty crude analysis.

Mr Hoare: As a consumer, I want to be in a position to protect myself with insurance if I am an at-fault driver, so that I can protect myself by buying more coverage. But as somebody who could be an innocent victim, I want to be assured that I can recover 100% of my damages. I'm willing to co-insure for the risk with respect to myself being an at-fault driver.

Mr Kormos: Quite right. We were talking about this earlier today. So we're talking about what the Legislature and the legislation ought to require. At the very base it ought to require, in terms of mandatory coverage, tort coverage so that you, as an innocent victim, can be assured that you're going to be able to collect in the event that you're injured by a wrongdoer. When it comes to the no-fault provisions, protecting yourself against yourself, you regard that as a very individual decision, based on the amount of money you want to pay and the amount of need that you perceive yourself as having.

Mr Hoare: Yes, and the risk with respect to myself being an at-fault driver.

Mr Kormos: The risk that you perceive in terms of assessing yourself.

Mr Hoare: Yes.

Mr Kormos: We saw the caps go from \$600 under Bill 68 to \$1,000 under 164 in terms of no-fault benefits recovery, and down to \$400 as is proposed here. There was a lot of debate. In Bill 68 the government proposed initially \$450, and then during the course of the committee it was increased to \$600. The \$1,000 was attacked by some as the lower-income driver subsidizing the more prosperous ones, but at the same time, having said that, insurance is all about people subsidizing each other, isn't it?

Mr Hoare: Yes.

Mr Kormos: Good drivers subsidize bad drivers; lower-income people subsidize higher-income people. The other counterargument was that the \$1,000 cap in many respects was illusory because very few people would reach that cap in terms of who made that kind of income in our society and the vast majority of people who made incomes where they would reach the cap would tend to have alternative sources of income replacement. Is that a fair analysis as well, as a generalization?

Mr Hoare: Yes, as a generalization. I guess I didn't see the \$1,000 in that light; I saw it as just a simple ability to abuse that system.

The Chair: Thank you very much, Mr Kormos.

Mr Kormos: Now the proposal of \$400, does that ring true as an appropriate level of cap? Thank you, Chair.

The Chair: Mr Kormos is getting used to me cutting him off, and I feel badly every time I do it. I'm

sorry, Peter.

Mr Kormos: He apologizes both during the hearings and afterwards, and he calls me early in the morning to apologize. I'm grateful for your kindness, Chair.

Mrs Marland: Actually, we don't think you cut him off soon enough, Mr Chair. Sometimes it's quite interesting listening to Mr Kormos, because--just excuse me a moment, Mr Hoare--if we listen long enough to the representative for the third party, as we have on and off for the last two weeks when we've had the privilege of you being here, and you and I have been together for 11 years--

Mr Kormos: The last eight years, Mrs Marland.

Mrs Marland: It's always an education, because sooner or later you've talked around the whole 360 degrees of the debate and in favour of all of it on the way around. It's very exciting.

I think it's interesting when we look at the percentage of people who understand their insurance policies, because I would respectfully suggest it's probably about the same percentage of people as understand their mortgage agreements. When we are into that kind of contractual agreement with other parties, we are dependent on the person in between, who in this case would be the broker, and we sometimes have to assume that when we're dealing with something we're not specialists in, we're dependent on that middle party. In your own profession it's the same kind of thing.

When you talked about being in favour of the ability to purchase additional benefits, that is something I agree with. I agree with it very strongly as a matter of fact, as a democratic right in anything, and I sort of anticipated that Mr Kormos might take umbrage with that comment. But I felt that it's rather similar to whether the person who is buying automobile insurance in the first place is buying it on a brand-new Ferrari or buying it on a 12-year-old Chev. We make these choices based on our own circumstances and desires. In making those decisions, however, some people find there are ways to get around the whole system.

The concern I have from listening to examples in the last two weeks is the fact that there are still loopholes to any either existing legislation or the draft legislation that's before this committee at this time. I'm wondering if you have any further suggestions, in addition to your presentation today, to deal with people who frankly have cost us all money, speaking on behalf of the members for Mississauga South who are fed up with what it costs them to insure against motor vehicle accidents.

The things that affect all rates are multidimensional, but one of the areas that really annoys me a lot is the people who sign up for their insurance, then go and buy their car or take ownership of an old car. They meet the requirements of the licensing because they have the insurance, and then the next day they go back and cancel their insurance. I'm wondering, from your professional perspective, if there's any solution to that problem that you would like to suggest to us.

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Mr Hoare: I think the draft legislation does address some of those issues with respect to the level of no-fault benefits at this point in time. As I said before, with the level set at \$1,000, that just opened up the floodgates to abuse. With a cap at \$400, obviously it's not as attractive to try to take a run at the system, if you will.

I think bringing back the tort claims is also a very good control, although some people may not agree with me. But in terms of the situations I'm involved in, once you get involved in a tort situation, there is this check and balance. It's a natural check and balance which tends to weed out the very frivolous claims.

The Chair: Thank you very much, Mr Hoare. We'd like to thank Peat Marwick Thorne for their presentation before the committee today.

GAIL DELANEY

The Chair: We now welcome Dr Gail Delaney from Parkwood Hospital. Welcome to the committee. If you'd like to make a presentation to the committee, we could fill any remaining time with questions.

Dr Gail Delaney: I noticed that.

I'm a specialist in physical medicine and rehabilitation, also known as a physiatrist, and I've been working in the field with spinal cord and brain injury patients for a number of years. The patients that we see at Parkwood Hospital and our two main rehab programs are spinal cord and brain injury. They are two of our big programs, and we have some concerns that the expected legislation could have a negative impact on them.

I've prepared a document and I've got three appendices at the end that may help the committee members with some of the lingo that we use. The first appendix refers to the spinal cord injury group, the second to brain injury, and the third, just the definitions of disability, handicap and impairment that are World Health Organization definitions and the ones that we follow.

There are a lot of things in the legislation that cause concern. I thought it would be most fruitful if we just zeroed in on a couple that we were most concerned about.

The first one is the definition of "catastrophic." I understand you've heard lots about the brain injury side of it and I won't belabour that, but I would like to point out a few things. The big thing we're concerned about is that the definition is left too ill-defined and that really it'll be just too ambiguous and subject to negative interpretation on behalf of our patients. When someone says something like "quadriplegia" or "paraplegia," it may seem on the surface that that should be obvious, that the person would in fact have a catastrophic impairment. But we've had some experience with different types of insurers, shall we say, where that's not always so clear-cut.

Even within medical circles, one could interpret the term "paraplegia" as referring to a complete paralysis, and in that kind of a situation a person who really couldn't walk and was confined to a wheelchair might have some weak leg movements, but not be considered paraplegic if that definition was followed. Paraparesis and paraplegia in medical circles tend to be used somewhat interchangeably. We also use terms like "complete paraplegia" and "incomplete paraplegia," and we define those according to how much movement's left or how much sensation is spared. So we're really concerned that this is considered when the definition of catastrophic is being looked at.

I thought it might useful if we just took an example that I think would illustrate the point. I've assumed that there's a 34-year-old insurance adjuster or politician, Mr Kelly, and he's driving home from work one day and going the speed limit, not breaking any laws, hits black ice and goes out of control--by the way, this isn't a real person, but this sort of thing happens to our patients all the time--and he collides with another vehicle in an intersection. He's properly insured and he qualifies for the income replacement benefit.

At the scene, he's paralysed from the shoulders down. He arrives at the trauma centre and it is determined he has broken his neck. He has a C5-6 fracture dislocation which is in the neck. He can shrug his shoulders. He doesn't have any feeling in his legs or his body, he can do a few things with his elbows and, other than that, has no use of his hands. By two days after injury, he can wiggle the big toe of one foot. By definition, in medical circles, he now has an incomplete quadriplegia. He does not have complete quadriplegia, even though he can't scratch his nose, feed himself or do any of those kinds of activities.

It would be typical for a patient like that to spend about three weeks in and out of intensive care, get a tracheostomy tube, come to our rehab program and spend four or six months in a hospital. It may take him years to recover. It wouldn't be unusual for a patient like that to be getting therapy for many years, never regaining full control.

Where does the definition fit in this kind of situation? When would the determination be that it's a catastrophic injury? Would it be at the scene? Would it be a month later? Would it be two years later? I

think that's a really critical point in terms of the needs being met for these kinds of patients.

Another example of this would be the brain-injured patient I once treated with a left permanent hemiplegia. By any medical definition, he had hemiplegia. He had no use of one arm, minimal use of one leg, used a brace, a quadripod cane, kind of dragged his foot. If you picture it, he looked like somebody walking with a very severe stroke. That's what he looked like.

He had an accidental death and dismemberment policy which was worded very similarly to the way this definition is, and it said that he would qualify if he lost the use of both arm and leg. The insurer decided that, although he had absolutely no use of his arm and he had very poor use of his leg, since he could move his leg a little, he did not meet the threshold and didn't qualify.

The other point would be with brain injury, regarding the Glasgow coma scale and how that's used. The way it's written now it excludes many moderately severely injured patients. I'm not going to elaborate because I know you've gotten into that quite a bit already, and I think the appendices will help clarify where we see that would go.

In terms of this first point, we had three recommendations that I discussed with the other physicians at our place and some of the other staff.

First, "paraplegic" and "quadriplegic" could be defined according to commonly held standards in medical circles, also used by the Olympic association and so on, where we look at impairment codes. They're coded A, B, C, D, E, and that's explained in the appendix. We would say that if you look at what that level is about a month post-injury, you're going to capture almost all the people with very severe impairments who are going to have long-lasting problems.

Second, we suggest that "loss of use of arm or leg" be interpreted to be any substantial use or most use rather than requiring complete loss in order to qualify.

Third, in terms of brain injury, we suggest looking at moderate and severe brain injury, not just severe, as the definition currently does. Again, that's explained in the appendix and in the recommendation on page 4.

The second point I'd like to make is about what we perceive as abuse of services. We recognize it's not good for the patient or the insurer if the patient is prescribed weeks, months or years of unnecessary, expensive treatment, and we're not by any means proposing that that be done. But there are more for-profit organizations springing up in Ontario and there doesn't seem to be any clear accountability whatsoever.

We've certainly had patients who have used up their moneys and they get dropped off the cliff, then we get them over at our hospital saying: "Gee, our benefits are all used up but we had all these therapies. I'm not sure exactly what they were supposed to do for me but I still have a lot of problems, and now I don't have any money left."

There's just no accountability. The self-referral by one member of a for-profit organization back to other members in that same organization should be seen as a potential conflict of interest, and it doesn't appear at this time to be in any way regulated. If an assessment's done by someone at a private clinic and they determine a person needs certain types of treatment and they just happen to be available at the same private clinic for a large profit, we see that as not necessarily helpful at all to the patient.

We think if the assessment's done and no non-profit service providers are available to provide the service, the insurer can facilitate finding a suitable provider or other agencies, rehab counsellors and so on, who don't have a direct vested interest in a particular organization. It doesn't benefit the patient for a large number of professionals to be involved in providing expensive services if they're not helping achieve rehabilitation goals needed for the patient. That would apply to catastrophic and non-catastrophic injuries.

We'd like to see something in the regulations that would address this issue of self-referral, the abuse of

this privilege and the conflict of interest that's obvious to us but seems to be not addressed at the present time.

1350

Mr Kormos: Thank you kindly. You're right, this has been addressed any number of times, never twice in obviously the same way.

I take a look at the chart in one of the appendices that talks about the length of time prior to re-employment, and rather than a bell curve it's an inverse bell curve, if you will. That is to say, it appears from that chart that people who suffer brain injury are either capable of returning to work in a short time, or in a very long time or not at all.

Dr Delaney: That's exactly what we see.

Mr Kormos: I appreciate your comments on the two-tiered system in terms of rehab, and I appreciate your attempts to clean up a somewhat arbitrary but at the very least incomplete grading system. But why have two tiers? Either it's going to take \$30,000 worth of rehab or \$40,000 or \$50,000 or \$100,000 or \$200,000 in any given case, depending upon, I presume, the nature of the injury, the extent of the injury, the type of employment one is returning to. That would have an impact on how much rehab is required, wouldn't it?

Dr Delaney: Absolutely. That's get into the issue of handicap and disability, not just impairment.

Mr Kormos: So why are we creating these two tiers? Why do we rely upon some sort of definition of "catastrophic," no matter how narrow or how broad? Why aren't we requiring insurers to provide rehab for a response to brain injury incurred in the course of motor vehicle accidents?

Dr Delaney: That's an excellent idea. I'm not sure how realistic it is.

Mr Kormos: Why wouldn't it be realistic?

Dr Delaney: I think the issue, as I've seen it, really relates to how much money it's going to cost to do it. There has been abuse in the system by patients as well; I realize that. What I think we're trying to ensure in our presentation is that you don't lose some who are definitely catastrophic injuries and are not being included in this definition, and the lower amount just doesn't fit. We'd like to see more available for people who have deficits, not less.

Mr Kormos: Quite right. But what is the value of this lower cap if it means that there are going to be X number of brain-injured persons who will not be the subjects of an effective rehabilitation program?

Dr Delaney: Not much. What I would rather see is a single definition of disability and handicap base needs that are going to be able to get treatment.

Mr Kormos: Yes, and in your appendix you've made reference to some universal--among others, the United Nations' definition. Those are strictly starting points, right, and that's your purpose in including those?

Dr Delaney: There's ambiguity. The terms "impairment," "disability" and "handicap" are not used consistently in the insurance industry, and I think we should be following some sort of standard.

Mrs Marland: Thank you very much, Dr Delaney. This is a very concise, easy to follow presentation. After two weeks, we now appreciate the ones that have clarity, and the summation of your recommendations is very straightforward.

You have, in the abuse of services where you are talking about the self-referral issue, hit on an item that has been brought up to the committee a number of times in the last two weeks. It's a concern we have, because in the existing Regulated Health Professions Act we now have the requirement where a referring

party has to declare their interest if they're referring a patient to--in fact, I can give you the wording: "It is a conflict of interest for a member to order a diagnostic or therapeutic service to be performed by a facility in which the member or a member of his or her family has a proprietary interest, unless the fact of the proprietary interest is disclosed to the patient and to the college before the service is performed." The point is, we have that in legislation now.

Dr Delaney: But where's the accountability? It's happening all the time, so it's not working.

Mrs Marland: Exactly. It's not working. How would you, as a person in the profession, suggest we deal with it as a government? Enforcement? Is it the withholding of fees through OHIP? Whatever suggestions you have.

The other issue is the point you made that for-profit organizations seem to have grown like mushrooms around the province. We've heard people, not in so many words--but certainly it sounds like it's a licence to print money because this is what the system engenders at the moment. One of the suggestions we've had is that these facilities should be accredited. Would you like to comment on both those areas for us, please.

Dr Delaney: In terms of the conflict of interest, it isn't always that the person necessarily even owns the organization. But if you're working for an American company you want to keep your job, so you want to bring in the business. That is one of the types of things that we see. For an example, if a physiotherapist or a physician sees a patient and makes a list of recommendations, I don't think that same assessor should then be able to offer those services at their centre. Someone else, an independent person, a physician or someone in a similar speciality, should look at that and say, "Yes, this is reasonable," or "No, it is not reasonable."

I guess the DAC allows that sort of assessment to be done, but I think it has to be looked at. What can happen is that you get a long list of services. We have people who don't have third-party funding, with injuries from falling down the stairs, and they do just as well as some of these people who get 15 services but they only did it with three or four services, but they were good quality services. Where's the evidence that you need the 15? I don't think it's there. We need to actually look at in a critical way and ensure there's something specific that's going to be required and that they really do need all these nine or 10 people and that the same thing can't be accomplished with a fewer number of people at a cheaper cost to the system.

Mrs Marland: And you think DAC can do the looking at it?

Dr Delaney: I think the DAC can do a lot of it. I don't think the DACs are used perhaps as much as they should be.

As far as your issue about accreditation, I'm not sure it should be that. The regulations, if they were tightened up a little and addressed some of this, it would somewhat take care of itself. I don't think it necessarily has to be accreditation. The people working in these facilities are all certified through their colleges, so they're people who are already certified. I don't think you need to introduce another expensive level of assessment and accreditation. If you make it really clear what your regulations are, these organizations have to comply and there needs to be some random checking that they do comply.

Mr Crozier: There's one left, so please sit down, Dr Delaney, because there's something nice I want to say and I want it on the record. You may not recall, but I called you about a year or so ago to help a constituent. You were very helpful and I appreciated that. So everybody doesn't do everything for profit these days.

I too was concerned about the conflict of interest, and I think that question has been answered. Have you been practising for, say, 10 years or more?

Dr Delaney: I've been practising since 1979.

Mr Crozier: So I can ask you this. Mrs Marland used the term "mushrooming," and that was used by

one of our presenters this morning. Do you find that you're treating more--I'm thinking, in this case, of brain-injury patients, but others--than you used to for automobile accidents? And do you think it's because of the system that's improved the access of people to your services, or what might be the reason, if that's the case?

Dr Delaney: I haven't practised in brain injury long enough to look at it over the long term. What I can say is that we've looked at our statistics in terms of the number of cases who present and there's a bit of an increase in the number of brain-injury patients, and that's true right across the country--not just looking at the fact that some people are being diagnosed with mild brain injuries and that's sometimes questionable, but also looking at the moderately and severe brain-injured. A lot of people who died are now surviving with severe brain injuries, so we're getting more survivors, and in that sense we're getting a higher prevalence, we're getting more numbers. I'm not suggesting that I don't think the public system can handle it all. I don't have a problem with that. I just think it needs to be fair and equitable, and right now it isn't.

The Chair: Thank you very much, Dr Delaney. We appreciate your input.

1400

DAVID KLEIN

The Chair: We move now to Dr David Klein. Welcome to the standing committee.

Dr David Klein: Members of the committee, I would like to begin by saying that most of you have never used your auto insurance; therefore, low rates are of primary importance. However, for those who are in a major car accident and do need their injuries covered, having adequate insurance is a number one priority. What this committee needs to decide is whether the benefits of low insurance outweigh the rights of those injured.

I was in a major motor vehicle accident in December 1994 and was completely innocent. I soon found out that I was not adequately covered and I feel a bit betrayed by the whole system. I was hit by a drunk driver and I've been left with permanent heart injuries which will probably shorten my life. I had a fractured, dislocated hip which will probably lead to a hip replacement somewhere down the road. I had a fractured knee, several fractured ribs and was off work for five months.

I am a physician, and as such am a self-employed individual. The no-fault insurance really does not address self-employed individuals and they're really not treated with any kind of continuity. When a self-employed individual is injured, not only is his own income affected but also the income of the people he employs. A self-employed individual is not only going to lose his income but he may also lose his business. I think for that reason there has to be adequate legislation to protect all innocent accident victims.

The currently proposed legislation has improved from the standpoint that a victim in my situation can now sue for lost income, although why for only 85% of net income I have no idea. Income from my practice was nil during my time off. Because of my injuries, my working ability has diminished significantly compared to my pre-accident abilities and has directly affected my income since returning to work. I will never be able to recoup this income loss. It just does not make any sense that I should take a loss for an accident that I was not at fault for. I realize optional coverage is available for increased income replacement benefits, but why should the innocent victim have to incur extra cost for an accident he did not cause? Even though suing for lost income has been reintroduced, the proposed legislation still, in my judgement, falls short of what I feel is fair legislation.

First of all, if a self-employed individual is injured and the business comes to an abrupt halt, there is often a cash-flow problem. How is net income decided for income loss? Is what the business was generating the same as what it would generate in the future? A business just starting up is vastly different from what it may be five or 10 years down the road. For the many people who are living from paycheque to paycheque, a 15% reduction in after-tax income would most likely affect their ability to pay bills. If they are totally innocent of the accident, in that they did not cause the accident, why should

they suffer? They have already lost their health, and according to the proposed legislation, there's a high probability that they will also lose their ability to pay their debts.

Second, catastrophic injuries need to be broadened by definition. How do you define "severe impairment" under the threshold to sue for income loss? In my professional judgement, and you must realize too, what would be a severe physical impairment to one person would not necessarily be that severe to another. For example, losing a finger would not necessarily be a severe impairment to a teacher but would be to a surgeon. You have complicated your legislation with a physical threshold, which, as I illustrated, will be full of inconsistencies, and also a proposed deductible of \$15,000. I suggest that by proposing only the deductible, you will still eliminate any trivial claims, but at the same time give all victims the chance to sue if their individual situation warrants it.

Again, what is insurance for? Is it to protect those who are injured? If so, let us be offered legislation that in fact does this. Give the innocent the ability to at least not suffer financially.

It is not fair or wise to allow insurance companies to have a lot of influence on these issues. They are businesses with a bottom-line interest in dollars and cents. Insurance companies are very quick to take our premiums but not so quick to pay benefits. If you let the insurance companies dictate what the innocent victim gets, the innocent victim will certainly be the loser.

I did not realize when the present legislation came into effect in January 1994 how very little I really was covered for. It is mandatory for the government, if they pass a law that gives very little protection to the public, that the public is informed that their insurance rates are down but they are covered for less. I am concerned that this system is going to be costed on the backs of the victims. You can never appreciate this fact unless you are a victim.

One last thing I would like to draw attention to is the attitude of insurance companies towards their clients. I have found in my dealings with them that one of the most stressful and disappointing things was the way I was treated. Despite having major injuries, I worked very hard at recovering, yet I was made to feel guilty during that time.

The insurance company should be expected to come down at the time of the accident to explain the victim's rights and what the individual has the right to benefit from under the no-fault system. They should also be honest with the client concerning what information is deemed necessary for their files versus voluntary. If there are falsehoods with their presentation, they should be held accountable. No doubt you are aware that in my profession, physicians are certainly held accountable for any pertinent information withheld from their patients, unintentionally or not.

Being a physician, I understand the difficulties the insurance companies experience regarding verification of a claim from an automobile accident. I'm not trying to generalize by saying their job is easy or clear-cut, but I do not think, as mentioned earlier, our society can walk on the backs of the victims in order to have cheaper insurance. I appreciate that there are always going to be those who abuse the system, but let's not sacrifice the true victims to get at those who abuse it.

It is surely a crime that not only have I been victimized with my loss of health but also my loss of income. I worked hard for an education that would lend as much security as possible. However, because of an irresponsible driver, my future ability to work at my previous level of commitment will be greatly diminished. As a result of this, along with government and insurance intervention, my family and I have been left with a future financial situation that is in jeopardy and definitely no longer very secure.

Thank you for giving me the opportunity to voice my opinions.

Mr Douglas B. Ford (Etobicoke-Humber): Dr Klein, thank you for coming today. Could you give me the overall scenario? Say Doug Ford goes out and gets in a very serious accident. They take me down to your hospital and you're taking care of me. Could you tell me the whole scenario that goes on from there? I come down, I have some serious injuries, and I end up in your care at the hospital. What carries on from there?

Dr Klein: You're assessed, and depending what injuries you have, you will be treated for those injuries.

Mr Ford: I realize that. I'm saying, how do I get involved with all these other people coming in, the insurance and everybody else?

Dr Klein: The thing I found most frustrating with my experience was that I was injured, my wife had a call from the insurance company the next day, and it wasn't the most pleasant phone call in the world, and all of a sudden they're asking for all this information. I'm a self-employed individual, and I'm not able to prepare it.

Mr Ford: Who calls the insurance company? Yourself or your wife or somebody? I just want to know how it gets started.

Dr Klein: I'm not sure who called the insurance company. I wasn't really in any condition to know how they got involved. I guess my wife must have called. Right from the point I was in the accident, I almost felt like I was guilty of something.

Mr Ford: Don't you have a peer group of doctors that examines you? You're the doctor, you got injured, they examine you, they make recommendations. How do these carry on from there? Where does the insurance company come in saying something different?

Dr Klein: The insurance company then looks for somebody to say something different.

Mr Ford: But you've got your peer group there--

Dr Klein: I've got my peer group. They will look for another physician to say what they think they would like to hear.

Mr Ford: Why do they have that power over a person like you and your associates? I can't understand that, I'm a little confused, and I'm on this committee.

Dr Klein: My understanding is that the insurance company has the right to have a second opinion on whatever your injuries have been.

Mr Ford: Is that one person's opinion? You've got a group of doctors, your peer group there, specialists, everybody, taking care of their friend.

Dr Klein: Right. They've given that opinion and then the insurance company will say, "Look for something to make things seem less clear-cut." At least, in my opinion, that's what's been happening.

Mr Jim Brown: We've heard some presenters who have suggested that we increase the fine for lack of proof of insurance. I'm curious on your views about how we cure the impaired driving problem.

Dr Klein: Not only was guy who hit me drunk, he didn't have any insurance either, or a licence, for that matter. The laws have to get stiffer with drinking and driving. I can't see how we can continue. This fellow has not even come to trial yet. My accident is over 15 months old. A trial date has not even been set yet.

Mr Jim Brown: Is he still driving?

Dr Klein: He didn't have a licence to begin with, so I hope not.

Mr Jim Brown: What do you think about confiscating the vehicle?

Dr Klein: It was his friend's vehicle, and the vehicle wasn't in very good shape afterwards anyways.

The Chair: If we could move to the--

Mr Ford: Just one second. Your peer group, you have five or six specialists there, they're going to give you service and advice, and then this outside person, whoever they are, comes in makes a decision. What do they do, wheel you out somewhere else?

Dr Klein: They'll ask me to go to another area to be assessed by another physician. I guess they look at records and files, at some point far removed from the accident.

Mr Ford: And they have the authority to do that over your group there?

Dr Klein: Yes.

Mr Ford: Thank you. I just wanted to get that information, to get it straight.

1410

Mr Phillips: Thank you, Dr Klein. It's my understanding that the coverage you now wish you had is available; it's that somehow or other you weren't aware of what you were covered for under your auto plan.

Dr Klein: I had other insurance. Basically, the car insurance hasn't kicked in a whole lot. The problem lies in being self-employed and having the business expenses as well, and the insurance company can come in and look at my business expenses and say, "You really don't need that." I'm still buying things for the business, things that "You don't really need," therefore my income actually keeps on plummeting, because they're saying, "If you didn't buy that, it would mean your income would be that much higher." You get caught in this catch-22 situation.

Mr Phillips: Yes. What I'm trying to get at is, for the committee's help, what is the fundamental package that everybody should be required to cover and what things should be optional, and how do you make sure people know what they are covered for? What I'm taking from your comments is a couple of things. Correct me if I'm wrong here, but one is that after the accident you seemed quite surprised by how little coverage you really had.

Dr Klein: I did look at the act when the car insurance thing came in; they give you one of those little pamphlets. My impression was that if you're really badly injured you'll be covered, and if it's something trivial you're not going to be covered. I thought, "Okay, fine, I can live with that," and I didn't really think too much more about it until I actually looked at the details of, what am I covered for? I didn't realize that loss of income was something I wasn't going to be covered for. Maybe I didn't read it closely enough, but I just looked at it and said, "If I'm badly injured, I'm covered, and if I'm not badly injured, I have to take my lumps and get on with it." That's where the surprise came.

Mr Phillips: I'm just trying to pursue what your recommendation would be for what should be in a basic package that everybody has to have when they are purchasing auto insurance in Ontario and what things should be optional.

Dr Klein: The fellow was talking earlier about allowing you to get 100% coverage. That is something I would like to see. If I could have bought 100% coverage, I would have bought 100% coverage, because I've always had the umbrella policies and all that. Through my own association I had extra disability insurance, so I wasn't too concerned about upping the weekly benefit.

My biggest problem has come with the increased costs of business and running into the problem of having to justify everything I buy for the office. It's difficult enough, as most people in business know, to know what to purchase and what not to purchase and the rest without having somebody looking over your shoulder and saying, "You don't really need that" or "Why did you buy this?" I don't have time to deal with those kinds of issues. I just have to go out and do what I think is reasonable, and if the insurance company doesn't agree with it, I guess I just lose. These are some of the issues I find frustrating from a self-employed person's perspective.

The other thing is that my income fluctuates every month. The insurance company still has no idea what

to do with me. They can't peg me into any spot, because my income might be X number of dollars one month, twice that the next month, half that the next month. They are having difficulty knowing what to do with that.

The other thing is, when you have outside coverage--like you're saying, you can be covered for other things. I was covered, but quite often now it's very difficult for a self-employed person to get insurance that starts before 30 days, and then usually at 80% as opposed to the 90% that was with the car insurance. I think that covers you for all illnesses, so obviously you're going to want outside insurance anyway. When I bought insurance, I wasn't thinking specifically of a car accident. I was thinking: "What if I get sick? What if something happens to me?" I bought the vast majority of my insurance through the other, not being too concerned about a car accident. I guess I should have been more concerned about it, but I wasn't.

Mr Kormos: Thank you, Dr Klein. You're one of several victims who have come forward--nowhere near enough--to talk to this committee. I appreciate Mr Ford's line of questioning, because he was getting at something very important: a very firsthand sense of what goes on from the point of accident through to the receipt of benefits, if indeed there are any.

The insurance companies, like they have during the Bill 164 debates and like they did during Bill 68--this is the third major round of so-called reform--come to these legislative committees, cap in hand, for all the world looking and sounding like Mother Teresa, as if all of a sudden they had undergone major conversion, talking about how eager they are to contribute to the welfare of the community and the driving public and their great concern and compassion for injured people, innocent victims et al, when in fact at the end of the day their goal is to collect the most amount of premiums and pay out the least amount of benefits. That's what private sector, profit-oriented--and I understand that. I'm saying that's the reality of it.

My friend Mr Ford responds by his questioning to the complaint from the industry about how the lawyers are mucking things up. "If it only weren't for those lawyers in there advocating for innocent victims, why, insurance premiums would be so much less." But the industry won't come clean--these guys are the masters of obfuscation--because they won't talk about the amount of money they spend on lawyers fighting valid claims, they won't talk about the amount of money they spend on doctors arguing against valid depictions of injury by bona fide physicians. These guys are the bait-and-switch artists of Ontario. They are the three-card monte dealers of this country, and a pretty despicable lot in total.

You talked about information, and you, like several others, have appealed to this committee to have the government or somebody engage in educational processes. What about the broker? These guys, by and large, rake a big chunk--talk about a rake. You know the sort of rake they take at a casino? That's nothing compared to what brokers rake off when it comes to selling insurance contracts. Aren't they responsible for educating their clientele about exactly what it is they've bought and what the shortcomings are? Shouldn't the onus be on them, even to the point of perhaps making them a little more liable even at law for making sure that you or Mr Ford or Mr Hudak or Mr Wettlaufer or Mr Arnott are adequately covered and indeed own what you thought you bought?

Dr Klein: I think the problem here lies in the fact that most people, when they're not in an accident, aren't thinking about insurance. I never really thought too much of insurance other than the fact that I bought it. In fact, my original insurance policy that I had through my association was purchased about seven years earlier and had never been updated. That's where I think the problem lies, that most of us are just too busy in our everyday lives to worry too much about insurance.

In honesty, I remember the broker did send me a pamphlet and I did read it, but I would like to see at the time of the accident maybe somebody coming down and explaining the rights to the victim's family so they have a clear-cut idea. That's what I would like to see, because there was a lot of confusion and a lot of things that happened that I didn't think were right. I would like to see them held responsible for some of that kind of stuff. I think they should be held responsible. Just like the police officer has to give the Miranda before somebody can be arrested, somebody should come down from the insurance agent and give the facts the way they are, what information has to be provided and if you need to talk to a lawyer, all that kind of thing. The way the insurance presented themselves to me was: "We're not adversarial.

That went out with no-fault insurance."

Mr Kormos: Meanwhile, they've got your wallet and your watch.

Dr Klein: I certainly did not find them not adversarial. I would like to see them held accountable at least for some sort of information after the accident, that whatever legislation is passed here today, they come down and lay things out to the victim.

The Chair: Thank you very much, Dr Klein, for appearing in front of the committee. We certainly appreciate firsthand information like this.

1420

ONTARIO AUTOMOTIVE RECYCLERS ASSOCIATION

The Chair: We now welcome the Ontario Automotive Recyclers Association, Mr Fletcher, executive director.

Mr Steve Fletcher: The majority of people are here before this committee talking about the personal damage side of the automotive insurance industry; I'm here to talk about the physical damage side, and specifically some of the fraud opportunities that exist.

Our industry is the industry that processes end-of-life vehicles, and one of the most valuable end-of-life vehicles is the insurance write-off. In looking at insurance write-offs currently, we've identified two specific problems.

One is that the current system of controlling and disposing of insurance write-offs actually promotes vehicle theft in this province, which has a negative impact on rate stability, and also the fact that anyone can purchase salvage or an insurance write-off, which promotes the underground economy, again promotes the auto theft component of disposing of those write-offs.

Currently what happens is that if a vehicle is stolen you try to go to your licensing office, the vehicle identification number is identified by law enforcement as a stolen vehicle and you will be stopped at that point. The underground economy attends an auction or purchases a salvage vehicle, takes the VIN plate off that salvage vehicle and puts it on to a stolen vehicle, both physically on to the car and electronically registering it that way. When the vehicle shows up at the licensing office, the fact that it's a stolen vehicle is hidden.

In Quebec, in 1992, they put legislation in place to address that and it's the model that Ontario is looking at and that the Canadian Council of Motor Transport Administrators is advocating as a national model. In that model there's a mandatory requirement for the insurance industry to declare a vehicle a write-off to the ministry, and they brand that vehicle identification number into one of two categories, either a non-reparable vehicle or a salvage vehicle.

If it's non-reparable, that identification stays with the VIN for ever and ever and it can never go back on the road. If it's a salvage vehicle, again that brand stays with the vehicle for ever and ever. If you then steal a vehicle and try to attach a wrecked VIN plate to that vehicle and are stopped by your local licensing office, the vehicle will be branded as non-reparable or salvage and it can't go back on the road. Basically, it stops the usage of VIN plates from insurance write-offs to hide stolen vehicles.

In Ontario, in 1995, there were 35,000 vehicles stolen, and that's a number that's increasing by about 10% per year. In Quebec, where they've had the legislation in place, we now have surpassed them as the stolen car capital of Canada and their rates are going down by 5% to 10% a year.

What has happened is that because Ontario does not brand its insurance write-offs, the underground economy is coming from Quebec, purchasing our salvage vehicles, taking the actual VIN plate back to Quebec, hiding the stolen vehicle. Unfortunately, they've also shown the underground economy how that operates in Ontario. So it's a very thriving business in this province.

To put a salvage vehicle back on the road, the model outlines a specific reinspection process that not only looks at the safety of the vehicle, has it been repaired properly, but is it the original vehicle that was written off so that you're not hiding a stolen vehicle, and there's also a stolen part component to it all to make sure you're not supporting chop shops to get rid of parts illegally. Once that vehicle passes the inspection, it obtains a rebuilt status and it can then go back on the road.

The second part of what is happening with insurance write-offs is that basically anybody can buy a written-off vehicle in the province and that promotes the access to the underground economy, whether they're going to use it for a stolen vehicle hiding process, or they are bought by backyarders or people who use auto body repair as a hobby, take a vehicle and repair it to the best of their ability, selling it back to a consumer and that consumer has no idea that vehicle was ever in an accident.

The insurance industry is actually reinsuring those vehicles. Today's modern vehicle, if you're in an accident, is designed to crumple around you so that the occupant's safety is maximized. If you cosmetically repair that vehicle, the next accident that happens is going to be cataclysmic. It's not designed to take another impact. Those vehicles are out on the road and nobody knows how many or if they're being driven.

We have been discussing the fact that these problems exist and that there are solutions out there with a variety of people. The Insurance Bureau of Canada is participating, the brokers' associations, GM, law enforcement, and it has yielded a policy brief, which is included as the handout, and that brief supports the implementation of a CCMTA model within Ontario. It also goes one step further than the model that's recommended and in place in Quebec in that it develops criteria for who can purchase salvage, and utilizes a self-regulatory model so that there's some control as to who has access to those vehicles.

That brief has been presented to the Minister of Transportation as well as to Finance, Environment, Solicitor General, Consumer and Commercial Relations. There's a wide variety of ministries that are involved.

The benefit, if that model and the revitalization of the criteria are put in place, is a decrease in auto theft by cutting out the VIN switch fraud, which provides rate stabilization and cuts down on insurance fraud. It also allows the police to get on to other business, because it institutionalizes some things that can happen rather than chasing after these vehicles one at a time.

Our estimation is that if the model is put in place, over a three-year period stolen vehicles will decrease by 30,000 over that three-year period in Ontario. There will be improved road safety in that the vehicles that are written off, when they go back on the road, will have gone through a proper reinspection process, and improved consumer protection in that the consumer will know if a vehicle's been written off, and if it has achieved a rebuilt status, they will know it has passed a more significant safety reinspection than the current safety check that's utilized when there's a registration transfer.

There will be an increase in PST collection. Because it is an underground activity, there's a tremendous amount of cash for parts business out there. Basically, if you are only purchasing a VIN plate, you're left with a hulk that you have to get rid of, and that vehicle is cut up into parts and sold for cash. So there's a tremendous amount of lost PST revenue.

The fifth component is environmental performance in the province in that if you restrict the vehicles or make it very difficult for an amateur to purchase the vehicle, the fluid recovery, CFC recovery, which they're not currently doing, will be greatly enhanced.

Again, I come from this a little differently than a lot of other presenters. I'm not discussing the personal damage side to it all, but there are some fraud components in the draft legislation that we would like to see pursued a little bit further in that this issue is happening. It's a significant issue and we see it as an opportunity for the government to take a stand on the VIN fraud theft.

Mr Phillips: I really appreciate this. It's kind of mildly out of left field, but it seems to make so much sense. Who would likely argue against it?

Mr Fletcher: The underground economy.

Mr Phillips: Who would argue publicly against it?

Mr Fletcher: No one we know of. The stakeholders we've talked to have covered the consumer groups, and obviously they want the protection that the vehicles are going back properly, and they don't want to have their vehicles stolen.

The insurance industry is now cooperating. The theory is that you obtain more money for your insurance write-off if you sell it to anybody because there are so many insurers in the province that I have a guaranteed return on that salvage, where the probability that a like vehicle's going to be stolen from the policyholders I have is slim, but they are beginning to see that for every salvage vehicle that they throw out there, they're greatly increasing their theft rates.

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Mr Phillips: I gather you believe this will reduce theft by about a third.

Mr Fletcher: Correct. It will slow the increase. Right now we're in double-digit increases, and if we look at the Quebec model it's decreasing it by 10%. We want to get it down into the negative numbers. Over three years, we're looking at a reduction of a third.

Mr Phillips: In theory, I don't know what per cent of the \$5 billion of insurance premiums go for theft.

Mr Sampson: Ten per cent; just a guess.

Mr Phillips: Your judgement is that this should have--when I say significant, I mean a 1% impact or something on insurance premiums, would you think, or have you done any estimates on that?

Mr Fletcher: Law enforcement considers it their number one stolen vehicle issue because it is organized. It's not a joyriding situation. These are people who specifically go out looking for specific cars and get them out of the province as fast as they possibly can. Because it's underground, nobody has a handle on it. The government, the insurance industry, as far as we can see, do not have a handle on how big and the total impact of it.

Mr Phillips: When you combine this with what are quite sophisticated anti-theft devices on new cars, I think, do you see dramatic drops in auto thefts over a five-year period, more than just the third that you're predicting here?

Mr Fletcher: These are professionals who are involved in this, so I don't think there's anything you can throw at them in terms of keeping them out of the vehicle that's going to keep them out, but if you cut down on their opportunities to resell that vehicle--they only make a profit when they actually sell the vehicle again. If you can cut down on their ability to get rid of the vehicle, that's where the real benefit is.

Mr Kormos: You remind me of the maxim, "Locks are for honest people only." That is, if somebody's a professional, first of all, they're going to find a way to do it one way or the other; second, they're less likely to get caught than an amateur; that's what being professional's all about. You're simply talking about reducing it and making it even more difficult, perhaps taking away some of the profiteering which makes it attractive.

Annually, we see lists of most stolen vehicles. What qualities does a vehicle have that puts it on this top-10 list of most stolen vehicles?

Mr Fletcher: A combination of resale value. The 4x4s and the sport utility vehicles are popular vehicles, therefore they're easy to sell. There are certain vehicles that have the VIN number identified throughout the vehicle, so a sophisticated thief should replace all of those VINs, but if they're all over

the vehicle, they just avoid them.

Mr Kormos: But then it's even the scrupulous buyer who gets burned because it takes a trained anti-fraud person, be it OPP or from the private sector, to discover the stolen VINs and to tell that bona fide good-faith owner that he bought himself a hot car or motorcycle as the case may be.

Mr Fletcher: Yes. His only recourse is, if he's bought it through a legitimate dealer, to go back and say, "You sold me a stolen vehicle." About 70% of all auto sales are privately, so you basically have no recourse once they determine that it's a stolen vehicle.

Mr Kormos: But you don't want to discourage, surely, the use of replacement parts from scrapped vehicles, do you?

Mr Fletcher: Not at all. That's the industry basically that I represent. We make our profit by selling used parts to body shops that generally work on insurance repairs.

Mr Kormos: But you want them sold as parts to be added to a bona fide legitimate VIN vehicle?

Mr Fletcher: Right. The non-repairable vehicles are for parts only, which obviously we would like to go to a legitimate auto recycler. There are certain classes of vehicles that should be rebuilt because it's had hail damage or it's cosmetic. Those vehicles should also be rebuilt. It's just determining what those different levels are that are of great issue.

Mr Kormos: Now auto dealers--and the insurance companies are buying into it. I don't know if they own that company that manufactures these little gadgets, but a whole lot of auto dealers, because you know the add-ons on to a car or what the high markup is, it's like the rust-proofing which is, by and large, a scam when it's done by auto dealers, but they're marketing now these little devices that you mount under your dashboard with the gadget that you insert in it and then you pull it out and it's a theft-proofing for the vehicle. Are those very effective?

Mr Fletcher: Not that I know of. I've never really heard of the product. People just continually innovate new things to attempt to slow down the stolen vehicle market, but again in our opinion they're just cosmetic. There are some structural things that should be looked at.

Mr Wettlaufer: Thank you, Mr Fletcher, for your presentation. Through the two weeks that we've been holding these hearings, the one group of people who have come off without any criticism whatever are the automobile manufacturers. I think it's probably because we all have had in this society a love affair with the automobile, and I'm no exception. I've gone from the very powerful cars to the luxury cars at various times in my life.

You've mentioned that the vehicle was designed to crumple around you. This was done supposedly--in the marketing efforts it certainly was anyway explained by the manufacturers--to reduce serious injuries and yet it doesn't appear that serious injuries have been reduced one iota. It seems to me that somebody screwed up because we've substituted a very great--we haven't even substituted. It was supposedly a substitution of a major increase in cost of repairs for an increased cost in injuries.

Could you give us a guesstimate, of an average \$25,000 or \$30,000 car, at what point does it become insurance salvage?

Mr Fletcher: The economic equation that the insurance industry uses is--I hope I get this right--if the cost of repairs, plus the cost of salvage, exceeds the pre-accident value, then it's a write-off. So it costs you more money than it does to get out of the policy. What is happening is, as you write off more vehicles and as the price of salvage continues to escalate, more and more vehicles get written off.

Nobody knows that answer in terms of how many vehicles are being written off. The rule of thumb that's used around North America is 75% to 85%. If the cost to repair the vehicle is 75% to 85% of the pre-accident value, that vehicle is probably written off.

Mr Wettlaufer: Is that market value?

Mr Fletcher: It's pre-accident value, so it's usually based on the Red Book value.

Mr Wettlaufer: So actual value. Okay. In the cost of repairs, do you want to give a guesstimate as to what it costs to repair the average vehicle?

Mr Fletcher: No. It's highly variable. The later the model year, the more substantial the cost because of air bags and some of the structural things that they've manufactured into them. But at the same time, the later model the vehicle, the more likely it is to be dealt into the underground economy; therefore, there's no parts available for it.

The Vice-Chair (Mr Tim Hudak): Mr Fletcher, on behalf of the standing committee, thank you very much for your very interesting presentation today.

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NIGEL GILBY

The Vice-Chair: Next is Mr Nigel Gilby, representing the Advocates' Society. Good afternoon, sir.

Mr Nigel Gilby: My name is Nigel Gilby. I think I should say in starting off that after almost two weeks of hearing what I'm sure are 125 to 150 people who have been presented to this committee, I feel a little bit like Elizabeth Taylor's seventh husband in that I know what's expected of me, but I'm not too sure how I'm going to make it exciting.

If I can put into a nutshell what I'd like to say, I guess what I'd like to say is this: Innocent accident victims in this province have two big knives in their backs: One with the name David Peterson written on it, the other with the name Bob Rae written on it, and I urge this government is not to put a third knife in the backs of innocent accident victims with the name Mike Harris on it.

I am somebody who is pragmatic and I appreciate the difficulties this government faces in balancing all of the various interest groups and the concerns with respect to what coverage and at what cost. If I can be blunt about it, I suspect there will be a knife in the back of innocent accident victims, but what I would ask this government to do is to make it a penknife as opposed to being a rather large dagger, as have been the knives used by both the Peterson and the Rae governments in the past.

My paper--and I apologize for some of the typos; I haven't even had a chance to proofread it myself yet; it's hot off the presses, so to speak--addresses some issues where I think this government can consider weighing the issue of providing more benefits to the innocent accident victim and at the same time trying to control the cost of insurance as it relates at least to the issues of personal injury claims.

The difficulty, as we've heard from a number of people, is that I think accidents and people being injured in them have had a little bit too much play as being the root cause of increase in premiums. I think, if nothing else, what I've gathered from some of the representations made today, particularly from the insurance brokers, is that there are many factors that play in increasing insurance rates. That only, in my opinion, re-emphasizes the point that you don't and you can't and you shouldn't put it all on the back of the injured victim, and particularly the innocent injured victim, because you are asking them to take on the cost of not only the people who are at fault but also all of these other things that we've heard about: the cost of sheet metal etc.

Dealing specifically with the proposals, at page 3 of my paper I've set out various avenues in which I believe this government can control costs and at the same time ensure full rights to the innocent accident victim. The premise is pretty simple: If you allow essentially 100% recovery to innocent accident victims, then they are safeguarded in regard to what you may do in the no-fault legislation. In other words, if I'm an innocent accident victim and I know I'm going to get 100% recovery in tort, what happens to me on the no-fault side is more palatable because of course I have my tort rights for recovery. So the suggestions are basically looking at areas in which the no-faults can be reduced in order to keep

the premium costs down but at the same time ensuring that the innocent accident victim maintains their right to recovery.

I've dealt with the income replacement issue and some suggestions there with respect to who should or should not claim; the cutoff period in terms of retirement age. I've also dealt with the question of people who are self-employed, people who are on unemployment insurance, and some recommendations that I believe could be implemented that will reduce the cost of insurance.

The medical rehabilitation benefit issue has probably been the one this committee's heard the most of, and I think you have representations from people saying that it's increased--I think it was the State Farm person who said it increased 700% or something like that, to of course the individual rehabilitation companies who all say, "We're just out there trying to do the best for the injured persons."

If I can go back in time--and I've been doing this for a number of years, sometimes it seems like since the days the dinosaurs roamed the Earth--when you deal with pre-everything, in the days before you got OMPP or anything, I could literally count on the fingers of one hand the number of times that people used up the \$25,000. The reason for that is that the majority of accident victims sustain what we commonly refer to as whiplash injuries or soft tissue injuries, which doesn't mean they're not legitimate, but it means that the type of treatment and the effective treatment they need is substantially different than that person who is catastrophically injured.

One of the things that I have also handed out is the Ontario Insurance Commission's own bulletin, which of course seems now to be adopting the research that has come out of Quebec that talks about the effective treatment of those types of injuries. To be honest with you, from my personal experience, it is seldom, if ever, that that type of injury requires more than \$25,000 in terms of rehabilitation. It just doesn't happen.

My concern--and you've heard it from people like Dr Delaney and others--is that the definition of catastrophic has to be broadened. What you need to do is you need to ensure that those people who really do require the benefits get them. But at the same time, by reducing what is otherwise available to other people, I think you do a number of things: (1) It helps control premiums; (2) I think it directs people to more effective treatment, because if there's a limited resource available, if somebody's going for massage therapy or chiropractic treatment or physiotherapy, and if after 30 sessions they are absolutely no better, then the light's got to come on that maybe that treatment's not effective and it's time to move on to some other type of treatment. Hopefully, it will also discourage what has been indicated, at least on some occasions, of clinics that open their doors because they see a huge amount of money out there available to themselves and simply start treating people and treating them and treating them and treating them and so on and so forth.

Attendant care: I have some confusion as to why attendant care would be necessary in a non-catastrophic injury, assuming again that you're covering catastrophic injuries based upon a definition of function. I don't see the need for it, I don't understand why it's there, and again, I think people would be concerned that when it's there and available, then there's always the concern of people abusing it. There are many instances now where wives or husbands are being paid care benefits to look after their spouse, and the question is whether they should be paid and whether or not that care is necessary.

Designated assessment centres: I have problems with them. Using London as an example, you get a different result from a designated assessment centre depending upon where you live in this city. I can tell you exactly what is going to happen in a designated assessment centre based upon where the person resides, and that is a problem.

Medical examinations: I think the legislation presently drafted suggests that an insurer is only entitled to a medical examination when benefits are being paid. I think in fairness to insurers, they should be entitled to a medical examination even if benefits have ceased as long as it's on a reasonable basis.

The reimbursement of expense, which is found at page 4 of my paper: I deal with a number of issues there that I again see as being areas where this government could reduce benefits, again on the understanding that the innocent accident victim can make that claim if they can establish to the

satisfaction of a mediator or a trier of fact that their expenses in fact exceed that amount.

Case management: As an example, I don't understand again why one needs case management in a non-catastrophic injury case. And it's not just accident victims who are doing this. I was indicating at lunch time, a lady phoned me the other day, seven months' pregnant with twins, with an injury, and the insurance company is sending a voc rehab worker already. I just don't understand why that's being done. It's completely unnecessary and an absolute waste of money. That's something the insurance company has done in that situation.

OIC: I appreciate that this committee is not here to really deal with that. I see the OIC as being again a bureaucratic nightmare. It has become very ineffective, it has become very costly and what its original mandate was has been completely lost. I think significant savings can be effected if there is an undertaking to completely reform the OIC and the way it operates.

Given that I've got 10 minutes to talk, I will essentially shut up and I'm open to questions.

Mr Kormos: It's interesting you're here now, Mr Gilby, because of course this morning we heard, among others, from Mr Vanveen, an innocent victim who certainly was denied his day in court. But that's not the point of it. He was denied compensation when he was a thoroughly innocent victim, in no way contributing to his own injury. I just can't understand how any fair-minded person could tolerate this innocent victim being called upon to trade off her or his rights so that at-fault or guilty or negligent drivers could somehow receive higher no-fault benefits. Would you interpret this purported balance between no-fault and tort and the compromise in that same way, or would you interpret it in a different way?

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Mr Gilby: Yes, I would. Unfortunately, to a large extent lawyers who do this type of work see people--and the reaction is really one of anger. A person who has already been in an accident, who has sustained an injury, whose life is literally turned upside down--and I'm not talking about somebody who has a six-month soft-tissue injury where their neck aches; I'm talking about people who have real injuries that cause real turmoil. It's anger, because they really feel, as I think some people have already mentioned today, like they're the ones who are guilty, somehow they're suspect and they're being victimized again. It's not bad enough that they've been in the accident; now all of a sudden they have to forfeit something. I really have a great deal of difficulty in trying to get them any kind of reasonable explanation as to why they have to give up their income, why they have to give up their rights because some government decided to do something.

Mr Kormos: From my point of view, I've got this old two-storey house down in Welland and if I'm stupid enough to not tie down the extension ladder when I go up fixing the eavestroughs or painting the soffits and I fall off the ladder, I can injure myself. I know that I'm the author of my own misfortune and I accept the responsibilities, and if I haven't prepared for that by virtue of coverage for sickness and accident, I can understand that. But I'll be damned if it's because my neighbour comes by and literally and maliciously knocks the ladder over. In that instance, when I'm doing all the right things, as Mr Vanveen was, I'm sure I or any other member of this committee would feel a gross sense of injustice at not being compensated by the person who literally and maliciously knocked the ladder out from underneath us. I just really don't understand the sellout of innocent victims. I don't think there's a person in Ontario who's fair-minded who will tolerate that.

Mr Kormos: There's a response from Mr Gilby.

Mr Gilby: I think the perfect example is, you had that subway tragedy in Toronto. I don't know if anybody else has mentioned this in the hearings--and if they have, I apologize--but there's nobody here in this room right now who wouldn't say that the people who lost loved ones or the people who were maimed, who had amputations onsite, shouldn't get 100% compensation. Because all they did was buy a ticket and ride on a train. It's exactly the same as somebody like Mr Vanveen. All he was doing was sitting in a car, minding his own business. Why do you differentiate between those two? How can you justify that? You've got to look the Charlie Vanveens of the world in the eye and tell them you're going

to do that to them.

Mr Ted Arnott (Wellington): Thank you, Mr Gilby, for your presentation. Thank you also for the humorous way you started it. We have heard a great deal over the last two weeks and we appreciate your constructive comments as well throughout your presentation.

This committee can choose to make recommendations to the Minister of Finance on the OIC. On your concluding point, I'd just like to hear very briefly what specific recommendations you would have for the committee for reform of the Ontario Insurance Commission.

Mr Gilby: It'd take a long time. I think you've got to look at the abolition of it. I think that it has become a bureaucratic nightmare. Decisions now are taking nine, 10, 11, 12 months to be rendered. There's inconsistency. You have a lot of people, because of course they have no right to have any counsel at the first level of mediation, so what's happening is that the mediators are acting as both counsel and mediators, and doing insurance work as well as plaintiff work. I know that the insurance companies as well would echo the same sentiment. If we could agree upon nothing else, I suspect you would find there's a general agreement that if you don't get rid of it completely, you have to have a massive overhaul of it. It is just becoming too cumbersome, too costly. I could, and would be happy to, give a written submission to this committee on some of the specific proposals or changes I would recommend, but there are a number of things that should be done.

Mr Arnott: Would you not agree, though, that the government should maintain some dispute settlement mechanism outside of the courts?

Mr Gilby: Absolutely. One of the things that I say in my paper, that I applaud this government for proposing, is the idea of the advance payment, the idea of the early settlement encouragement, the idea of what--you can call it mediation, alternative dispute resolution, it's got so many different names. It exists, it's out there, absolutely and clearly. I think, in fairness and in honesty, with the courts and right now the federal government, with cutbacks, you've got to divert it to another system because the courts are getting to the point that they are overburdened. So I support that 100%. I think the OIC has simply lost its focus, it's lost what it was intended to do and it has become, as I call it, the Workers' Compensation Board of accident victims and it's going to end up in the same situation, in debt and with all the workers hating it and all the employers hating it.

Mr Phillips: I look on the thing as simply as I can. To me, this is about a \$5-billion industry--I think that's about right--and theoretically it's trying to find a way that money and services flow to people who have been in an automotive accident and trying to find a way to maximize what they get from the \$5 billion and minimize the cost of administering it; at least, that's my own view. What I've heard so far is that--and I don't know whether these are the right numbers or not--the brokerage industry is roughly 10% of that \$5 billion, the insurers are roughly 20% of it. My understanding is that pre-1990 the legal fees involved in the auto insurance business were roughly \$400 million, so my simple view of it is that the consumer is paying \$400 million for services, legitimate services from lawyers to get them access to their portion of the \$5 billion. You've given us several recommendations on how you would cut almost the administrative cost and maximize the benefits to people. You know this industry extremely well. Here you say you were chair of FAIR outside of the city of Toronto. Is the \$400 million an accurate figure in terms of legal fees that were paid, or what is the number?

Mr Gilby: I forget exactly what the Osborne commission found. At one time I did know that; it's been a number of years now. My recollection--and I may be wrong on this--was that the Osborne commission found that the legal cost part of the system was something under 10%, although if you listen to some insurance companies, they would suggest something to the contrary.

It sounds very self-serving and you may just assume that it is and disregard it, but I think it's like anything; you've got good and bad of everything. You've unfortunately got some bad lawyers out there who don't know what they're doing, but generally speaking, I think lawyers make the system more efficient because the reality is, have you read this legislation and do you really understand it? If you do understand it, I want to tell you that you're one of the few people in the province who do understand it, outside of lawyers who specialize in this area. One of the individuals from one of the associations said

that lawyers now have become more specialized because of this legislation. It is so difficult, it is so complex that people are coming to lawyers to explain fundamental rights. If there's an increase in legal costs because of that, it's because of the complexity of the legislation.

I think people always need an advocate--and I don't mean to slight insurance industries necessarily--because they're going up against a sophisticated entity which knows and understands what's going on, and they are somebody who has walked into a completely foreign environment. You might as well take them and put them on Mars, and they've now got to deal with the Martians, who speak a different language. What they need is an interpreter. Lawyers have that task of being the interpreters to try and explain and understand and make sure that people get what they are entitled to. That's the whole purpose.

So there are always going to be legal costs in the system. Unfortunately, I think it's a necessary evil, if it is evil, and I believe personally actually keeps the costs down, because when you get people who are unrepresented, that's when hearings become much more protracted, that's when problems become much more difficult, because they don't understand and they have no one on their side who can explain things. Lots of times it's telling somebody, "The insurance company's right." Lawyers aren't just there to say, "Sue the bastards." They're there to say, "Listen, the insurance company's right," or, "You're wrong," or, "You don't have a claim for this, that and the other."

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The Vice-Chair: Mr Gilby, thank you very much for your time today and also for your detailed answers.

Mr Gilby: Thank you. If I may, I'd like to leave with the committee some submissions of one other person who was an accident victim, who did not get on the hearings but asked if I would file this on their behalf.

The Vice-Chair: Very good.

LONDON AND AREA MASSAGE THERAPISTS ASSOCIATION

The Vice-Chair: Our next deputation is the London and Area Massage Therapists Association, represented by Donica Abbinett and Melanie Purres. Good afternoon.

Ms Donica Abbinett: Thank you very much. Good afternoon, members of the committee. My name is Donica Abbinett. I'm a registered massage therapist in practice in London. My practice includes treatment of motor vehicle injuries. Along with myself is Melanie Purres, another massage therapist in practice here in London and also one of the council members for the College of Massage Therapists of Ontario.

I would like to thank you for making these changes to the legislation and see that they will be of much benefit to the system. I also want to thank you for holding these hearings and allowing us to express our concerns about legislation.

My concern is that registered massage therapy is not included under the statutory accident benefits schedule. Many of my clients, who are survivors of motor vehicle accidents, have expressed much relief after a series of massage therapy treatments. These clients have entered into these treatments as a way of finally getting relief from chronic pain. Many of these clients have had other forms of treatment done before they entered into massage therapy. They found that either their previous treatments were limited in results or had no effect in changing the quality of their pain. The use of prescription drugs was not something they were willing to deal with for the rest of their lives. In one case, the client has extreme environmental allergies and reacts to synthetic substances. In her letter, in appendix 1, she writes:

"Being a person who is highly allergic to numerous medications whether they be oral or topical, I have attempted on numerous occasions to find whatever means of therapeutic treatment useful for me in my 'accident recovery.' This has led me to registered message therapy. I cannot stress enough how massage

therapy has helped me physically and mentally in such a way that I am capable of performing my activities unaffected by reactions medications have subjected me to."

This client was a pedestrian in a motor vehicle accident five years ago. I started to work on her in October. She had approached me to consider taking her on as a client because she was currently in court proceedings with the insurance company. She was not sure if she could pay or even a possible date when they may pay for treatment. I took her case because I felt that delaying continuous treatment would set her back even further. In over 20 treatments, she has gained more relief than her previous treatments--which were not continuous, due to the problems with the insurance company--has had increased mobility and been able to experience one day of no pain. Please remember, this is the first day of no pain in five years. This has affected her greatly and given her a positive outlook and put the accident behind her.

It is not just myself asking to be under this legislation, but other massage therapists who have had similar experiences in their clinic. We work on motor vehicle accident survivors daily. Sometimes problems that may have happened many, many years ago crop up as problems today. If a client is treated at the initial time of accident, this may help to decrease the possibility of further complications as time passes. This way I am able to treat the injury itself rather than the injury and secondary complications. An example of this is a whiplash case that may have happened many years ago that later crops up as headaches or shoulder pain or numbness and tingling into the hands. These could have been prevented had they had massage therapy at the initial time of rehabilitation for the motor vehicle accident.

Another thing that massage therapy provides for the survivor is the chance to ask questions as to what has happened to them. By this, we can educate the client and can help them to help themselves and not become dependent upon the system. Often I give a series of stretches or exercises in conjunction with treatment. This part is called home care. This gives the client empowerment of their rehabilitation process. Sometimes it can be as simple as hydrotherapy, which is a treatment using ice or a warm water bottle applied each day, or simple stretches done on a regular, set schedule.

We don't necessarily work alone. Often we work in conjunction with other health care practitioners listed in the statutory accident benefits schedule. The most dramatic and shortest time I have seen with a motor vehicle accident is with a team effort allowing the client to get back to where they were before the accident.

I ask you to include massage therapists in the statutory benefits schedule under "health practitioner." We are under the Regulated Health Professions Act, 1991, otherwise known as the RHPA, and are specialists in soft-tissue injury and pain and are fully prepared to be accountable for our treatment plans.

I appreciate this opportunity to present in front of this committee. I have a very busy practice and rescheduled my clients to be here today. I really thank you for giving me this time, and so do my clients. If you have any questions for either myself or Melanie Purres, we would be happy to answer them at this time.

Mr Sampson: Thank you for taking the time out of your busy schedule and forgoing some opportunities at the office to earn some income to come and help us through this dilemma.

The issue as it relates to being included in the definition of "health practitioner" relates to being able to sign treatment plans. That's effectively it, isn't it?

Ms Abbinett: Yes.

Mr Sampson: Are you establishing treatment plans now anyhow, when somebody comes in?

Ms Abbinett: Yes.

Mr Sampson: So you'll map out to the claimant. Are you also mapping out this treatment plan or providing this treatment plan to the insurance company?

Ms Abbinett: For the motor vehicle accident victims I've been working on, it depends on whether the insurance company is asking for them or not, because often, in order for me to release information to them, they have to have signed a release form with the client first before I can send them any information.

Mr Sampson: They're paying for the treatment but they may not know what they're paying for, frankly, now. Is that the situation?

Ms Abbinett: For the direct treatment plans, initially sometimes that is the case.

Mr Sampson: That doesn't make a lot of sense, does it? You can understand why they would be concerned about where they were going and where the money was being spent if they had no idea what the treatment plan was.

Ms Abbinett: When people come in to see me, it's usually because the client has asked for it. They've either had some experience with motor vehicle accidents previously and had massage therapy treatment or they've come in on their own. In my particular clinic, most often I'm looking at people who have had motor vehicle accidents many, many years ago, as opposed to within a short period of time.

Mr Sampson: Okay, good. That was getting to my second question, when do you normally see them? It's not right off the bat. This is somewhere down the road when something else hasn't worked effectively.

Ms Abbinett: It depends upon the way the clinic is set up. In my particular clinic, most times it's quite a few years later, as opposed to right after the accident.

Mr Sampson: But generally in response to the fact that some other prior treatment hasn't really done the full job, if I can put it that way?

Ms Abbinett: Yes.

Mr Sampson: And so to a large degree you've got some insurance company and I suppose claimant frustration right off the bat when they enter your door, some concern that the insurance company is saying, "Well, gee, I don't know whether this is going to do it or not." Are you finding some dilemma of the insurance companies in that regard?

Ms Abbinett: There's only been one case in my particular clinic. I can't speak for anybody else's clinic.

Mr Sampson: How long would you do this treatment plan for? Would it be for six months? How long would you map out a treatment plan for?

Ms Abbinett: Most times when I set a period of time for a treatment plan it's usually over a six-week period, but each time the client comes in I'm continually reassessing them as to how they're doing today, how they've been doing since the previous treatment, have they noticed any changes, have they unconsciously been able to do things that they weren't able to do beforehand without feeling any pain?

Mr Sampson: But at or near the end of the treatment plan, are you sitting down and determining outcomes versus expected outcomes and then re-establishing a treatment plan?

Ms Abbinett: Usually, after six weeks, if we don't see a change, I refer them elsewhere.

Mr Sampson: How many times have you said to a patient, "I can't do anything for you any more"?

Ms Abbinett: On percentages or numbers?

Mr Sampson: Take your pick. Percentages maybe is better.

Ms Abbinett: Percentages, probably about 30%.

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Mr Phillips: We're trying to get I guess an idea of how to improve the system and what not. One presenter this morning said that one of the challenges that they face is that some of the people they see are almost too tired, because they've been running from one professional to another for treatment and are seeing six to eight different professionals during the week for different treatments. It struck me at least as a bit odd that somehow or other there are, firstly, that many involved--and I tend to think each of them has a fee, obviously, attached to that--and secondly, that it just didn't seem like it was good practice.

I guess my question to you is, is that something that goes on on a routine basis, that people you may be seeing may also be seeing three or four other professionals doing other techniques? Second, how do we legitimately improve that system so that we are saving money, obviously, but also improving the service to the injured party?

Ms Melanie Purres: If I can address that, on the second part of your question as to how you can reduce costs, my own experience in treatment of different conditions--not exclusively those suffered through a motor vehicle accident, but any soft-tissue injury--is that the most effective treatment and rehabilitation comes from a team effort, and that's not exclusively massage therapists, it's not exclusively physiotherapists or other treatment modalities. My personal experience with the people I've treated is that I see the fastest results with massage therapy applied directly after an injury so that the tissues can get to a healthier state, and at that point a physiotherapist would take over and strengthen the healthy tissues. That has been my experience so far as fast recovery and rehabilitation of an injury.

Mr Phillips: Of course I'm not an expert in the area, but it just strikes me as intuitively odd that somebody would be running in a week to eight different professionals for different services. But you're in the area. Is that something that I shouldn't be surprised about, that they would be seeing eight different professionals in a week?

Ms Purres: With respect to those who have survived a motor vehicle accident, I personally have never done a survey of my clients to find out how many practitioners they're visiting during a week, but it is very common that they do seek different treatment modalities, and that does come as a result of their insurer demanding that they see this practitioner, this vocational rehabilitation specialist, this occupational-related nurse, different modalities, different therapeutics.

Mr Phillips: So they would be following a plan. Normally, the people who come to see you would be following a plan that had been laid out by--

Ms Purres: Not necessarily, no. Often they're seeking massage therapy because many of the other treatments they have sought haven't been effective. So they're seeking massage therapy because they're finding results. Any other stuff they have to comply with their insurer and the demands of their insurer.

Mr Phillips: How would they have located you? You would not have been on their prescribed plan. They would have heard about you through referral or something?

Ms Purres: They may have been on the rehabilitation program in the plan. They may have been referred by another health care practitioner. They may have been referred by a friend. They may have been referred by someone they've talked to in a support group who has had benefits from massage therapy. There are referrals from everywhere. As massage therapists, although we are covered under the Regulated Health Professions Act as a recognized health practitioner, recognized by the Ministry of Health of Ontario, we don't require a physician's recommendation or referral in order to treat someone.

Mr Kormos: Thank you, both of you. We've heard from representatives of your profession in various parts of the province and the committee has heard even more as it's been to yet other places. In Ottawa, yesterday, Linda Matthews from Royal Insurance--that's one of the big international corporate insurance companies--again, with real disdain and with a very dismissive tone of voice, talked about the so-called feel-good treatments and complained about how they weren't in any way--

Mrs Marland: On a point of order, Mr Chairman.

Mr Kormos: Don't deduct this from my time, Chair.

Mrs Marland: Mr Chairman, I raised a point of order yesterday about Mr Kormos's choice of words and impugning what other people were saying. I would suggest that he is bordering on that again now and I'd ask him to perhaps be careful about quoting other deputations from yesterday.

Mr Kormos: Indeed. Thank you, Chair. Thank you, Ms Marland.

With real disdain and with a dismissive attitude, Linda Matthews, of that large international corporate insurance company, just passed away what she called "feel-good treatments." Now, she didn't define these, but she suggested that there was a plethora of feel-good treatments that weren't really doing anything to help accident victims and were putting something of a financial burden on these poor insurance companies. I didn't have a chance to ask her yesterday, and I still haven't found out what she's talking about. Is she talking about massage therapists? Who is it that the insurance company's trying to label dismissively with these so-called feel-good treatments?

Ms Abbinett: I guess my question is, was she referring to registered massage therapy?

Mr Kormos: Well, darned if I know. As I say, we have such a short period of time. Because my understanding of massage therapists is that they're prepared to work within the context of the management of rehab of a given victim. Is that fair to say?

Ms Abbinett: Yes.

Mr Kormos: As part of a team?

Ms Abbinett: Yes.

Mr Kormos: Recognizing that treatment or rehabilitation is not the sole prerogative of pharmaceutical-prescribing health practitioners, huh?

Ms Purres: You're asking if a massage therapist addresses things other than a pharmaceutical-prescribing health care practitioner?

Mr Kormos: You address different things than what that person addresses.

Ms Purres: I should clarify that for you, if I can. We address the same things essentially, but we address more, and that more is that we address the problem, versus most pharmaceuticals address the symptoms.

Mr Kormos: They mask the problem.

Ms Purres: I don't mean to suggest that. I'm saying they treat the symptoms. We treat the problem.

Mr Kormos: Right, and your goal is rehabilitation.

Ms Purres: Absolutely.

Mr Kormos: Right, so in no way could you be described as mere feel-good treatment.

Ms Purres: No, and I can appreciate where that view may come from. Unfortunately, in Canada there has been very little research in massage therapy. There has not been research money available. Only recently in the US has there been research money available. Consequently, there's not much documented statistical evidence to support the efficacy of massage therapy, although in European countries there is a great amount of research, unfortunately in foreign languages that are beyond my comprehension.

Mr Kormos: And the real proof is in the pudding in terms of the results you get, right, for any given

person that you're working with by way of rehab?

Ms Purres: Yes, the proof in the pudding is the results, not necessarily scientifically measurable or proven or documented in scientific research. It's quite enough to measure, for instance, range of motion, personal function and personal feedback from the patient.

Mr Kormos: I can't for the life of me think why this committee wouldn't recommend that massage therapists and occupational therapists, perhaps among other others, be a part of the recognized professionals who are involved in rehab. We'll see what they do.

The Chair: Thank you for appearing and sharing your views with us. It'll be helpful in our deliberations.

ZARA KIMBALL

MORRIS KARMAZYN

The Chair: We now have Mrs Kimball and Dr Karmazyn. Welcome to the committee.

Ms Zara Kimball: My name is Zara Kimball. I'm a 31-year-old, married and the mother of a 16-month-old girl, rather than boy, as it says on the piece of paper.

On January 8, 1995, my life changed forever when a man who fell asleep at the wheel collided with the car that my family and I were driving in. The accident took place here in London, on Commissioners Road just west of Wortley. The driver of the other car crossed right over the centre line and hit my family's car head on. There was nothing we could do to avoid the collision.

I was hurt quite severely in this accident. I had left hip and leg injury, separated my collar bone, sustained a whiplash-type injury to my neck and back, and most seriously, I injured my right upper arm and shoulder, resulting in a painful and disabling condition that is called reflex sympathetic dystrophy. This also diminished my range of motion, my ability to use my arm, and strength as well.

1520

At the time of my accident I was off work on a maternity leave waiting to return to my work as a nurse in the near future. Because of these injuries, I have never returned to nursing and I have been told by my doctors that I will never be able to work as a nurse again. Attached to the written portion of my submission you will find a report of Dr David Taylor. He is a doctor whom I was sent to by my insurance company. His opinion is that I am not capable of returning to work as a nurse because of the restrictions caused by the reflex sympathetic dystrophy.

Before my accident, I believed that the NDP government brought in the no-fault legislation to provide me with income and other benefits that take into account the fact that I cannot work as a result of my injuries and that I need special care to help me cope on a day-to-day basis. I thought this system was designed so that it would be easy for me to get what I was entitled to without fighting with my insurance company. I also believed that this was brought in to diminish the amount of people going into court and suing and that the insurance company would work for me.

Now that I am part of the NDP no-fault system, I know that it doesn't work too well in practice. For example, I am to receive a weekly income replacement benefit that is equal to 90% of my pre-accident net earnings. I do not understand why I do not receive 100% of my net weekly earnings or receive an amount calculated on my gross earnings, when none of my injuries were caused through my own fault.

One of my primary sources of complaint is the constant battle, and I choose that word intentionally, that I must face with my own insurance company. Every single decision that I make concerning rehab, child care and personal activities is criticized, picked apart or challenged in some fashion by the insurance adjuster who has been assigned to my case. I feel victimized over and over and over again.

At the very beginning, the insurance company did not accept the fact that I was scheduled to return to

work when my maternity leave expired. I may have to explain this in more detail in that at the time of the accident, actually prior to the accident, I had been working at Henry Ford Hospital as a nurse for two and a half months. At that time I became ill during my maternity and I had to quit work. I could not take a leave because it was under three months. On leaving, I was told just to make a call to my supervisor and she would initially contact human resources and I would get my job back. A week before the accident, that's what happened. I made the call, I spoke to my supervisor, and I had the job back verbally. I was then assigned to wait for another person to call me from human resources to do the paperwork.

I have never understood why the insurance company took that position because I supplied letters from my employer that confirmed the fact of my maternity leave and which also confirmed that I could not return to work because of the accident. I was forced to mediate this issue. I had to hire a lawyer to do so, and although I was successful, I was told by my lawyer that there is no provision for my costs. Although I had won, I had lost too because it cost me money I should not have had to pay and it wore me down just a little bit more mentally and emotionally.

Even though I was successful with the mediation in that my insurance company had agreed to pay me my benefits, it is still not paying me the proper amount. Just like before, I have supplied a lot of documentation confirming the extent of income so that my income replacement benefits can be calculated. Even though this documentation is very simple and very clear, the insurance company is still paying me just a portion of what I should be receiving. Instead of paying me 90%, I am receiving 50% of my net income. I seem to have no choice but to mediate again.

Shortly after my accident an old adjuster, so termed, was assigned to assist me. He put things into motion quickly and I felt that I was being looked after. Suddenly a young adjuster was assigned to my file who immediately cut me off most of my benefits that I had been receiving. For example, I was receiving 24-hour care around the clock which was well-needed. He walked into my home on a Thursday and by the Friday had reduced it to 15 hours per week, in which I relied on my mother to help out.

It was explained to me that the older adjuster was unfamiliar with Bill 164 and that he had made a lot of mistakes by giving me "too much money." The new and younger adjuster is supposed to know more about Bill 164, but all that he has done is badger me to the point where I sometimes just feel like giving up. But believe me, I won't.

For example, I was receiving in-home child care to assist me with the care for my baby, since I do not have the proper use of my right arm. My baby was just three months old at the time of the accident. After the second adjuster became involved, I now only have child care services provided to me for a few hours per week. Since this letter, that has also been cancelled.

In an effort to save money, the adjuster suggested that my mother perform the child care. It was explained to me that she would be paid for providing these services. For some reason, although my mother has been providing these services for quite some time, she has not been paid anything by the insurance company. I feel as though I have been tricked, because the insurance company knows it can take advantage of my mother more so than a licensed care provider.

My own experience has been with Bill 164. I can say that I do not like the system as I am not being properly compensated for my injuries and disabilities. The system that was supposed to be easy to understand, fair to me and inexpensive has turned out to be unfair, complex and expensive. My preference would be to sue for all my damages and have a fair chance to prove my case and escape from the manipulation and unilateral action of my insurance company. I do, however, think there should be some no-fault benefits available, pending a resolution of any lawsuit.

I have reviewed some of the proposals in the new legislation. One of the changes I disagree with is the further reduction to 85% of net earnings with respect to income replacement benefits. Although I do believe that it is better to give back the right to sue for lost income, I disagree with the proposal that income loss be limited to 85% of actual loss. Believe it or not, my family lives on a tight budget and that missing 10% hurts and missing a further 5% would make it even worse.

I am pleased to see that there is a right to sue for 100% of medical care, rehabilitation and housekeeping. I think that it is a good idea to have no-fault benefits available for these sorts of expenses until the whole claim can be settled or dealt with by a court.

As I stated earlier, I disagree with the limit of 85% on the right to sue for income loss. It just doesn't make any sense why this type of claim should be limited. If my injuries were caused by the fault of someone else other than a negligent car driver, I would be able to sue for 100% of my loss.

I also disagree with the increased deductible that is being proposed. As it has been explained to me, with my injuries as serious as they are to me and my family, none of my family members would recover anything with the proposed system because the proposed deductible would exceed the reasonable amount of their claim. Thank you.

Dr Morris Karmazyn: Mr Chair, members of the committee, my name is Morris Karmazyn and I live in London. I am a professor in the department of pharmacology and toxicology here at the University of Western Ontario. On June 16, 1994, my wife, Dr Margaret Moffat, was a passenger in a commercially operated airbus travelling from London, Ontario, to the Pearson International Airport in Toronto. She was on her way to catch a flight to Winnipeg to visit her family. This passenger van was travelling on Highway 401 near Cambridge. The airbus driver moved from the right driving lane into the left passing lane to move around the truck. The driver of the airbus failed to notice another truck directly ahead of him and drove the airbus at a high rate of speed directly into the rear of this truck. The airbus had 11 passengers, all of whom were injured, but three of whom, including my wife, died from their injuries.

My wife was an associate professor of pharmacology at the University of Western Ontario. We were married in 1988. She left behind her mother, a daughter and two grandchildren, along with many close friends and colleagues. It is extremely difficult for me to sit here and talk about these matters. I feel, however, it is important that this committee, as it contemplates changes to motor vehicle accident compensation, has the benefit of my experience in dealing with Bill 164 passed by the previous government. I also wish to comment on some of the legislative proposals you are currently studying.

I'm not a lawyer and obviously I do not fully understand the technical aspects of Bill 164. However, I have come to appreciate the unfairness of Bill 164 in compensating the innocent accident victims, particularly when a fatality has occurred.

1530

As a surviving spouse, I was entitled to receive a death benefit calculated by a formula that amounts to receiving a sum equal to 90% of my wife's net weekly income for four years. The minimum amount of the benefit is \$50,000 and it is capped at \$200,000. Other dependent relatives were entitled to \$10,000. In the case of our family there were no dependent relatives.

My wife, who was extremely successful in her chosen career, was just shy of her 50th year at the time of her death. Her income was important to our family unit. We were fortunate to be able to enjoy some of the good things in life. Under the restrictive formula in Bill 164, the death benefit which I received was less than \$130,000. This amount was supposed to compensate me for the loss of the benefit of support that resulted from my wife's death, assuming that she would have been able to work to her normal retirement age. Obviously, this figure has no relationship to the actual value of my loss, which I am told would probably be closer to \$400,000 to \$450,000, given her level of earnings. While I recognize that through illness or other accident our joint life together might have ended sooner, I must still deal with the harsh reality that it was the negligent conduct of another person that caused my wife's premature death.

Based on the scheme of Bill 164, I am denied the right to bring a claim against the driver and owners of the vehicles, who were responsible for my wife's death, for losses that my family and I have suffered. What troubles me is that those restrictions apply only because my wife died as a result of a motor vehicle accident. Please don't get me wrong. There's not enough money in the world to replace my wife or to compensate us for our loss. What deeply troubles me, however, is that my family and other families

of those who died in this airbus crash are being treated differently than those survivors of victims in non-car-accident cases.

Take, for example, the recent Toronto subway tragedy where a number of people were killed as a result of the negligence of others. The families of those victims have suffered no more or no less than my family. We are all the victims. Yet for some reason those victims are entitled to claim full compensation for their loss while my family receives only a fraction of our compensable losses. Can any of you explain to me why my family should be treated differently than the families of those victims? Why are we not entitled to be compensated fairly and reasonably?

It is unclear to me whether the draft legislation is a step in the right direction or a step backwards as far as fatality claims are concerned. I have reviewed section 267.4 of the Insurance Act that deals with the limitations on the right to sue. It is unclear to me, for example, whether or not under the new legislation a claim can be advanced for the future loss of financial support as a result of a death of a family member. The only expressed reference to a fatality claim is in subsection 267.4(3) that deals with non-pecuniary losses, which under the Family Law Act are for loss of guidance, care and companionship. If you intend to permit the surviving members to advance a claim for the loss of the benefit of the financial support of the deceased family member, then the draft legislation must be amended to make that perfectly clear.

To my untrained eye, it is unclear whether section 267.4 applies to a fatality claim. The reference to a claim for 85% of the income loss appears to refer only to a claim in a non-fatality situation, and I assume this was never intended. This section, I feel, needs to be reconsidered. Without amendment, it would be open to insurance companies to argue that the legislation does not permit a claim for any future income losses in fatal accident cases.

If this is true, then the draft legislation only permits a claim for a death benefit of \$25,000 for the surviving spouse and \$10,000 for the surviving dependants unless the deceased purchased the optional additional benefits. I have no complaint with the death benefits set out in the regulations so long as it is clear that surviving family members have a right to pursue a claim for loss of guidance, care and companionship as well as past and future loss of financial support and loss of services. To do otherwise would create a gross injustice to the innocent survivors and would make the current draft legislation even more unjust, in my view, than Bill 164.

If it is your intention that subsection 267.4(2) apply to a fatality claim, I must then question why the legislation restricts the claim to 85% of the net income loss.

I have been advised that compensation to the survivors is generally based on the net income of the deceased family member and that this amount is then multiplied by a dependency factor that takes into account the fact that the surviving family members may not have benefited from all of the net income of the deceased. The current legislation makes no reference to these factors, and it is unclear how the issue of dependency will be determined.

As I mentioned earlier, I hope the primary focus of legislative reform is fairness and reasonable compensation for innocent accident victims. To allow only 85% of the net income loss is an artificial deduction that cannot be justified. Why should the family be entitled to only 85% of an actual loss? As stated earlier, it is also unfair when one takes into account that if the death occurred as a result of negligence other than in a car accident, the family would be entitled to full compensation and would not be limited to just 85%.

I know that in your search of reforming automobile insurance, you will keep in mind the innocent victims of accidents, both those who are injured and the families of those who are killed. Although reasonable insurance rates are important, fair and reasonable compensation is, in my view, more important. A reasonable balance between the interest of the public to have affordable insurance and the protection of those who require the benefits of that insurance is required. We did not ask to become a part of the group of victims of motor vehicle accidents and look to you for the protection to which we are entitled. Thank you very much.

The Chair: Thank you very much, Dr Karmazyn and Ms Kimball, for your presentations.

BRANTFORD AND DISTRICT HEAD INJURY ASSOCIATION

The Chair: We now welcome the Brantford and District Head Injury Association and Lawrence Palk.

Mr Lawrence Palk: Mr Chairman and members of the committee, on behalf of the Brantford and District Head Injury Association, I would like to thank you in advance for the opportunity to be here today. Before I begin the formal part of my presentation, I would like to tell you a bit about myself and our organization.

In May 1988, I was the victim of a hit-and-run bicycle-car accident in Brantford, Ontario. The result of the accident was that I sustained numerous serious injuries, including a broken neck, a concussion, a fractured skull and numerous other injuries. In April 1989, I was diagnosed with a permanent brain injury to the frontal lobe area. In 1989 I became involved in the head injury movement through the Hamilton-Wentworth Head Injury Association and sat on their board of directors until late 1990, when I and the president of the same group formed the Brantford and District Head Injury Association. I continue to sit on the board of directors of the Brantford association, dealing with outreach issues and government relations.

Since 1990, our association has worked closely with representatives, such as yourselves at Queen's Park, on a variety of issues of concern to head-injured persons. In 1990 and later in 1993, we spoke at auto insurance hearings on Bill 68 and Bill 164. For nearly two years, our association worked with the Honourable Dianne Cunningham on bicycle helmet legislation. Since our existence in 1990, we have urged the government of Ontario to bring home head-injured Ontarians from American rehabilitation institutes so that (1) head-injured Ontarians might be closer to their families, and (2) so that they might be able to spend Canadian dollars at nearly half the price of American rehab institutions.

I'm happy here today to thank the government for this most recent announcement in this regard. In addition, I would like to refer you to a copy of a recent letter that the Honourable Jim Wilson sent our association, thanking us for our continued work in the head injury field. As an association, we continue to work tirelessly on behalf of our members and we look forward to continued dialogue with this government on matters of common interest, such as auto insurance.

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With respect to the proposed draft bill on auto insurance, our association is both pleased and amazed at the balance which the new draft proposal shows in a number of areas. However, we do have some real concerns about the bill which we urge you to consider.

(1) In respect to the non-earner benefit section of the draft bill, we are of the belief that a 26-week waiting period is entirely too onerous a burden to place on a potential innocent accident victim who, through no fault of his or her own, may be temporarily unemployed and actively seeking future employment. We therefore urge the committee to consider a one-week waiting period before the \$185 weekly benefit kicks in.

(2) We seriously disagree with the government's financial proposal regarding the right to sue for economic loss. In particular, we are of the belief that limiting the income recovery to 85% of net and future losses is an unnecessary threat to a victim's economic future. Having been through a civil suit myself, I can appreciate the necessity for economic certainty and security in one's later life. In point of fact, far too many innocent accident victims will never again return to traditional job settings, regardless of whether their head injuries are mild or extreme. This is not because they are lazy, but because they have suffered a lifelong injury. Better the innocent accident victims be granted some type of reasonable economic protection than that they become dependent upon the state on an ongoing basis.

(3) We are of the belief that the use of the Glasgow coma scale as an accurate measure of head injury is fatally flawed, as most head injuries are usually not detected for at least a year post trauma. The use of this scale serves to minimize the tragic and life-altering changes that take place in the lives of mildly head-injured persons. In previous presentations before this committee you have heard of some of these

changes; from my experience, I can identify with the disruption they cause in one's life.

We recommend the following changes and additions to the draft bill:

(1) A one-week waiting period for the non-earner benefits.

(2) The use of the Glasgow outcome scale in the assessment of brain injuries re the catastrophic impairment designation in the bill.

(3) The right to sue for economic or pecuniary loss for innocent accident victims should not be restricted. Clearly, the defendant insurer will receive full credit for statutory accident benefits, but all economic losses should be recoverable. If there is to be a limitation on a claim for income loss, it should be limited to 100% of net income, as opposed to 85% of net income.

(4) We recommend a change in the bill to a \$50,000 death benefit and a \$7,000 funeral benefit.

(5) We recommend that the draft bill be amended to read, "a deductible of \$10,000 for non-economic loss for pain and suffering."

We also note that there is no mention made in this draft bill with respect to measures involving impaired driving. We recommend that the committee either amend this bill or draft a companion piece of legislation. We believe that the use of proactive measures to combat these offences will have beneficial effects in reducing premiums, loss of lives, medical and rehab costs and will add to the safety of the roads which all Ontarians deserve and want. We therefore recommend:

(1) In accordance with the spirit of the recommendations of MADD Canada, Mothers Against Drunk Driving, that after a second conviction for impaired driving, licences be taken away for life.

(2) That driving interlock devices be used in Ontario and that any related costs of such devices be borne by the offending motorist.

(3) That the government of Ontario move with immediate dispatch to encourage the federal government to amend relevant sections of the Criminal Code of Canada relating to penalties for leaving the scene of an accident. The maximum sentence for these offences is currently two years, whereas the maximum for impaired driving is 14. This difference in the law is a direct encouragement, under law, for impaired drivers to avoid responsibility and avoid maximum penalties. We recommend a maximum sentence of nine years.

In conclusion, on behalf of our association, I would like to thank the committee for its attention. I would be happy to answer any questions you might have.

Mr Crozier: Thank you, sir. I'm glad that you came before the committee and introduced yourself. You were at our meetings in Toronto and it's good to see you here today. I have a question with regard to your accident. Were you wearing a helmet at the time?

Mr Palk: At the time, I was not, and I would tell you, as I would tell anybody, that back then the only people who wore helmets, for the most part, were competitive cyclists, and that's the reason.

Mr Crozier: I understand. I only ask that because there's been so much awareness made of that. I assume that you obviously are a proponent of it because of what happened to you.

Mr Palk: Very much.

Mr Crozier: It's strange to me, and you may want to comment on this, that I had many people in my riding call me objecting strenuously to any kind of law that would require them to wear a helmet on a bicycle, and yet we have to on a motorcycle. Some of the accidents--and I don't say this facetiously; I know it won't happen--some of the incidents that we've heard over the last two weeks, you'd almost think we've come to the point where we should wear them in a motor vehicle.

In any event, I appreciate the work you've done and must have done in order to put forward the helmet law, and we appreciate it. Having said that, I think my colleague would like to make a comment.

Ms Castrilli: Mr Palk, I too am glad to know who you are, because we have been following you with great interest in this committee. Could you tell me a little bit about how your injuries were dealt with and compensated? You were pre-Bill 68, so you would have been under the old tort system. Did you have a tort claim, or were your injuries dealt with through the health system?

Mr Palk: I had a tort claim. It took about four and a half years to settle.

Ms Castrilli: Did you go to court with it or was it settled out of court?

Mr Palk: We settled within about two weeks of going to court.

Ms Castrilli: Without asking any details, do you think that the claim as it was settled in your particular instance was fair? How does it compare with some of the provisions under the legislation that we're now contemplating?

Mr Palk: Given the situation, I think the settlement that I got was relatively fair. I'm sure any victim could always say, "Well, I wish I could have had more." Being realistic about it, I think I got a fair settlement. With respect to this legislation, I really urge the government to go back to 100% of net at the very least. The thought that people could be given what I can only consider a 15% deductible on top of net is something that most people I know in the head injury victims' movement would find most repugnant.

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Ms Castrilli: Having gone through the tort system, I assume you would advocate that there is a legitimate place for tort.

Mr Palk: One of the people that presented before your committee in Toronto said it better than I could have said it. When the insurance company, with its lawyer, and the plaintiff, with his lawyer, go to court, at least it's a fair fight. That's about the best I can put it.

Mr Kormos: Mr Palk, you're yet another veteran of these insurance wars. Jesus, I told some brokers this morning I suspect you and I will be sitting in this type of forum in four years' time.

Mr Palk: I hope not, Peter. I'm getting tired of this.

Mr Kormos: I know that, but the solution may not well be here. I should mention, and I know you wouldn't mind me mentioning, that a written submission that has been filed by Mr David Rowe was provided here. I hope committee members read it because once again, it's about an innocent victim, an 18-year old young woman, Jenni. No fault could be attributed to her, but as a result of a drunk driver crossing into the lane of the car that she was in, she finds herself now, at the age of 18, as a paraplegic, dependent solely on the no-fault system contained in Bill 164. Of course, she had no income at the age of 18. There was nothing upon which to base the no-fault benefits for the rest of her life; a bright, young woman, victim of a drunk driver and a victim of no-fault.

No-fault, Mr Palk, I submit to you, didn't work under Bill 68, didn't work under Bill 164. We're deluding ourselves. You've made a case for innocent victims. We read of young Jenni Rowe. We've seen the presenters before you. We saw Mr Vanveen earlier this morning. I wish Ms Cunningham was here, because this is her bailiwick and there wasn't but a member of the Legislature who didn't support her private member's bill. It was a dramatic thing for a private member's bill from the opposition to have been put on the order paper and received approval. I can't believe Ms Cunningham would endorse anything less than the right of innocent accident victims. She can speak for herself and I hope she will, but I can't believe that Ms Cunningham would support anything less than the right of full compensation for innocent accident victims.

Having said that, in the instance of preventing motor vehicle accidents--but I should say this: It's interesting that there are in this country provinces wherein there is the full right of innocent victims or the at-fault parties to recover, plus decent no-faults which take care of those innocent victims until their litigation is resolved by way of settlement or by way of judgement, places like British Columbia which provide full tort for innocent victims, full recovery of all losses, as well as no-fault benefits. Why isn't this committee looking at those too? I appreciate they may not be enamoured with public--well, not that they may not; the private corporate insurance industry isn't enamoured with public ownership of auto insurance. But why we're not looking at systems that work, wherein there is full recovery for innocent victims as well as no-faults, beats the daylights out of me. We've got another dog's breakfast, which implies that Bills 164 and 68 were tantamount to dogs' breakfasts too. Here it is. I've said it before, I'll say it again: Why don't we look at something that works instead of keeping on trying to reinvent the wheel when we know the axle's broken?

Mr Palk: Peter, one thing I would say about that, without getting into the political ramifications of it all, is that I don't honestly think that you have to go to any particular system in order to get what innocent accident victims deserve, which is full right to sue.

Mr Kormos: You have to go to a system that's fair and just.

Mr Sampson: Thank you for your presentation. It's not the first one that we've had that is asked, on behalf of innocent accident victims, the right to 100% of the economic loss, and I want to get to that number in a few minutes, but it's the first one that says that in addition to doing that we should also change the category for the non-earner. Most of the presentations on behalf of the innocent accident victims have said the non-earners are entitled to nothing. You're telling me you want to bring it back up to where it is now. I'll tell you, you can't have it both ways; it just doesn't work that way. We're going to have to find some way to balance it out. As I've been struggling with since July and Mr Phillips has now been struggling with over the last couple of weeks, the pie is that big, and what we give to the innocent accident victim we must take from the category of the at-fault victim. We have heard from numerous individuals over the last couple of weeks who would say that they are entitled--because they pay premiums--to dollars to deal with their recovery, because they've paid premiums, like you, the innocent accident victim, have paid premiums. So what are they paying premiums for if there's no benefit to be earned, if there's nothing there for them to deal with their loss of income, with their loss of association with family, with their physical and mental losses as well? What are they paying the premiums for?

Mr Palk: That's a very good question. When you mention the non-earner benefit, I have an awful lot of problem with the supposition that says that everyone who is a non-earner and who is theoretically unemployed is a malingerer. I hope that's not something that is in the thoughts of this committee, because there are legitimate cases of people who are trying to get back to work as best they can. I'm sure there are all manner of cases of fraud, but I would put it to you, sir, that in terms of percentage, during these hearings I've heard of anything from 20% of the cases are fraud to a gentlemen who had lived in England who was quoting 58%. Now it may be that way in Great Britain, but I can tell you from my experience, it certainly isn't 58%.

Mr Sampson: I agree with you that just because somebody is unemployed at the time of the accident, it doesn't mean that they're going to be unemployed for the rest of their life, which is why we have not responded yet to the pressures from the innocent accident victim groups to completely obliterate them from any earning capacity or any subsidy capacity on income under any plan. That's what the innocent accident victim groups have been saying and we've not done that.

But let me talk to this business of 100% income. You've gone through a situation where under the scenario you were entitled to receive 100% of future income loss. I would wager to you that you didn't get 100% income loss in your number. I don't want to hear what it was, but would that be a fair estimation?

Mr Palk: No, that wouldn't be a fair estimation.

Mr Sampson: So you got effectively 100%. There were no other transaction costs associated with--

Mr Palk: Oh, of course there were transaction costs.

Mr Sampson: What would have those been?

Mr Palk: My legal fees amounted to 15% of the settlement and were paid by the insurer. I wish in 1996 I could say the same thing.

1600

Mr Sampson: Yes, 15% of your award was paid in legal fees, paid by the insurer, but this money comes from somewhere. It just doesn't come from thin air. It comes from premium dollars.

Mr Palk: Of course it does.

Mr Sampson: Don't you think 15% is a rather large number?

Mr Palk: No, I don't. You've thrown the gauntlet out to me, so to speak; now I'm going to answer. I'm sure everybody could say, "There are good lawyers and there are bad lawyers, and there are good electricians and there are bad electricians," but I can certainly say to you that if it weren't for the fact that there were plaintiffs' lawyers around to take care of people when they are absolutely in a traumatized situation, I hate to think what would happen to them. I have personally gone through my own situation and I have personally seen other situations, and it is not pretty.

Mr Sampson: Mr Phillips was struggling with the legal costs associated with the tort period. That 15% number, just on the general damage side, if that number is average for all legal costs, would have put just general damage costs for the first six months alone of 1990 at about \$345 million--just for general damages for six months. Big numbers. He's underestimating his legal expenses associated with tort, isn't he?

Mr Palk: Big numbers, perhaps, but in this situation, when Mr Phillips is talking about a \$5-billion business, that sounds like a pretty small percentage to me.

Mr Sampson: Yes, but that's just general damages for six months.

The Chair: Mr Palk, we appreciate your presentation before the committee today. Thank you very much.

JOANNE BUCHANAN

The Chair: We now welcome Joanne Buchanan to the standing committee. You have a presentation to make, and perhaps we can ask some questions if there is some time remaining.

Ms Joanne Buchanan: I'll try to make it brief. I would like to duly note, though, that I have three motor vehicle accidents currently under litigation and I am here at great fear of repercussions from the legal and the insurance system for speaking out.

I have provided a letter for all of you which is more or less a summary of what will probably end up being my victim impact statement. I'm a three-time accident victim under different insurance legislation. I wanted to provide other people's statements as well, out of my own client files; I'm a registered massage therapist. Unfortunately, most of them also feared legal threats and insurance repercussions and were too terrified to provide those.

I am continually amazed at the level of fear and paranoia that the insurance industry is able to invoke from intelligent consumers such as myself. I am putting my neck on the line by going public with my case, as it is still in litigation, but I've nothing left to lose.

Each system or insurance legislation promised reduced premiums, increased benefits, ease of redemption

and compensation. The result repeatedly has been a carefully wrapped package with nothing inside, at least in my case.

I could criticize the new proposal line by line, but 10 minutes really isn't sufficient time to do that. I could also cry the plight of the hard-done-by accident victim to get public support and sympathy, but that's not why I'm here. Given enough time, as I said, I could produce other victim statements to back up my case, and numerous other people like me. The simple fact is that the auto insurance does not treat accident victims fairly.

Life isn't fair, but insurance, by definition, should insure the victims. In a slightly exaggerated analogy, I'm not a victim, I'm treated like a common criminal. Since it is against the law to operate a motor vehicle without insurance, I am forced to purchase no-fault insurance, at a rate determined by insurance companies, which I pay for on time. I ignorantly assume that "no fault" means that if an accident is not my fault, I can collect on my policy, and this just isn't so.

Criminals in this province appear to be treated better than a lot of accident victims. They are innocent until they are proven guilty, but I've been presumed guilty just by virtue of being a victim. I've been accused of trying to bankrupt insurance companies with false claims. I have legitimate, medically substantiated claims, but they can be refuted with simply one visit to a medical adviser or adjuster paid by the insurance company to write an unbiased opinion.

You are arbitrarily spied on by private investigators and presumed guilty of malingering long before any trial takes place. You are subjected to scrutiny usually preserved for hardened criminals. Your entire private, medical, personal and financial records become open to public scrutiny simply for the asking.

If I robbed a bank today, I would be before a judge tomorrow. I'd be sentenced, provided with free room and board, three balanced meals a day, complete medical and exercise facilities, education and rehabilitation expenses would be paid, and when I get out I'd have a new outfit and money in my pocket. I wouldn't have any freedom, but this isn't freedom either. They have controlled my life for eight years and continue to do so.

I am a victim of three automobile accidents, one in November 1986, one in November 1988 and one in January 1995. I was fortunate enough to survive these three motor vehicle accidents, under two provincially regulated auto insurance plans, but the cost to me financially, physically and emotionally can't be categorized or compensated. I won't get my life back and chances are I won't be compensated fairly for my losses.

At 16, I rushed to obtain a driver's licence and took the prescribed driver training course which promised me 10% less on my premium and I was classed as an occasional driver under my parents' policy. At 20, I purchased my first automobile and blindly paid a premium that I naïvely assumed, if I had an accident, would cover my damages, but I couldn't have known then how wrong I was. At 22, I was rear-ended in what was classed as a no-fault accident at the time. The other driver was charged. I hired a lawyer and my nightmare began.

Under the system in 1986, I was basically entitled to three benefits: lost wages--80% of my income to \$140 a month; medical damages for four years or \$25,000; and the right to sue for pain and suffering. What no one controlled at that time was how long or if I would ever receive any of these benefits. I waited 11 months to collect only one cheque for \$140, which I should have been paid all along, and I have never received a cent since.

I paid every medical expense out of my pocket and waited to be reimbursed. I was offered a ridiculous settlement at the two-year mark and was financially and legally coerced into accepting this offer because I had had yet another accident. I was blatantly told, and incorrectly so, that I would have to settle my first motor vehicle accident and proceed with my second one, or I would face two insurance companies battling it out in court for 10 years down the road and would probably end up with nothing.

In 1988, I had my second motor vehicle accident. I proceeded with legal action for yet another no-fault injury. My insurance company at that time did pay \$25,000 worth of medical expenses over a three-year

period, but when that money was gone there was nothing else forthcoming and I was left to wait for a trial to recoup my damages. I am still waiting for my trial after eight years.

Throughout the second motor vehicle accident, I persisted with my lawyer and the legal parties for a settlement, begging them to resolve this, and I kept questioning what would happen to me if I had another accident before this matter was settled. Unfortunately, I found that out in January 1995. The changes to the original system I was under are basically as follows: Now I could collect 80% of my lost wages up to \$600 a month, which was then increased to \$1,000; I could collect medical damages for 10 years or \$500,000 if I met threshold; and my right to sue for pain and suffering had been removed and later reinstated with a \$10,000 deductible.

I am now caught in a three-way insurance battle, with each company trying to blame my injuries on two other accidents. The fact remains that all three motor vehicle accidents were no-fault and I am being penalized for this. I am not at fault, yet I am forced to pay money out of my pocket for all medical mileage and treatment expenses and this should never occur under any of the systems. I am forced to wait for reimbursement and I will never recoup the full dollar amounts or the loss interest nor my lost wages.

The bottom line appears to be that there is no bottom line. The insurance companies in the province are not accountable for the policies they sell. They have managed to build in enough loopholes and escape clauses that they never have to pay what you are, in writing, entitled to. There are no set time frames for litigation, mediations or arbitrations and, in my case, all three methods have cost insurmountable delays and have all ended in stalemates.

Under the current legislation the insurance companies have forced me to be examined by their medical experts who refute all prior evidence because they feel they're all biased towards me, the victim. Under the new proposal, it appears to me that the insurance company will have a carte blanche approach, that they will have full approval and that they will only be accountable unto themselves. The no-fault victims have the right to medical opinions and this can be terminated with simply one visit to an insurance-appointed specialist and the new proposed rehabilitation centres.

I've been told by an insurance case manager that they are expert just due to the sheer volumes of claim files they read, and this is a horrific injustice to accident victims. Whether a victim simply gives up fighting out of fear, exhaustion or financial necessity, whether they have legitimate, medically substantiated injuries, whether they try to merely survive, they are penalized financially, emotionally, and most of all, physically. How can a system that gives free rein to the insurance companies claim to save the government or the consumer money? My premiums have never decreased and now you want to give me the option to purchase top-up insurance.

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Changes to auto insurance are definitely needed, but you should talk to the victims who have already dredged their way through three previous systems and can tell you undeniably that it doesn't work. If you promise it on paper and never deliver or only deliver a fraction, after years and months of waiting, then what have you gained? I pay my premiums, I purchase mandatory insurance and all I ask is to be compensated fairly, on time and without being presumed guilty.

As a multiple victim, I am self-employed. I cannot get extended health care due to the previous injuries I have sustained in other accidents. I don't feel I will ever be economically or physically compensated. I've had three accidents in 30 years and the likelihood of having a fourth one seems to be pretty good in my lifetime.

I don't agree with 104 weeks of payment period because I don't believe that if I haven't recovered in eight years two years is sufficient. I financially can't afford to wait a 26-week waiting period. At the current time, I cannot receive welfare, family benefits for disability or Canada pension. It's an eight to 12 months application period and all of those take a further eight to 12 months for appeals, and I'm in that process at the moment. I've been told that because I am self-employed, I don't qualify for any of these three, no matter what my legal circumstances are.

I have gone to newspapers, radio, Ombudsman Ontario, Goldhawk Fights Back, Dianne Cunningham and every avenue I can think of to find out what a poor accident victim, in my case, does for justice, rather than wait for the legal system to slowly come to a conclusion.

The only quote I could come up with in preparing this presentation was that every night before I go to sleep, I pray that the people with the power will have the common sense, and that the people with common sense will have the power, and that the rest of us will have the patience and perseverance to put up with people in authority in the meantime.

Mr Kormos: Thank you, Ms Buchanan. You never thought that there was any likelihood of being struck the second time or the third time, never mind the fourth.

Ms Buchanan: No.

Mr Kormos: What's really wacko is that there are insurers who treat not-at-fault accidents as worthy of demonstrating that you're a higher risk driver because somehow you put yourself in positions where other people are going to aim and take shots at you.

Ms Buchanan: Yes. I've also been told, as of my third accident, that I must stay with the company I'm with because if I switch to another company, I'm rated as an at-fault victim.

Mr Kormos: That's right, or else they're throwing you to the wolves.

Ms Buchanan: Yes.

Mr Kormos: How can the wolves throw you to the wolves, though? You obviously got the impression that I don't have much confidence or faith in the insurance system. I acquired my cynicism probably in a different way from what you have. Yours is probably far more valid.

The bottom line is that there are problems with the court system, and nobody's going to suggest there aren't, in terms of how quickly cases are getting through. I agree with Mr Harnick--I've said this before, I'll say it again--the Attorney General. Let's fix the problems with the court system and/or with the lawyers. But similarly, if there are problems with the insurance companies, let's fix those.

Ms Buchanan: I'd also like to note that after eight and a half years of waiting for my case to come to trial and two and a half years on a trial list, I had a trial date set. Three days prior to the trial, the insurance companies had their lawyer go before a judge and petition to indefinitely adjourn my case because they hadn't had time to prepare.

Mr Kormos: Horse feathers. They're trying to freeze you out. It's the oldest tactic in the book. These guys will play the game as dirty and as mean-spirited and as rotten as possible, because at the end of the day, they're playing the odds--we've talked about this before--that X number of people simply are going to abandon it or are going to be forced into speedy settlements where they're not getting a fraction of what they deserve.

The insurance companies have got lawyers, doctors, all these folks on the payroll. Don't forget, lawyers are the world's second-oldest profession. The ones that the insurance companies have working for them warrant that title in a way that no other lawyer could. They've got the power, you don't, and you, like so many other innocent victims, are left to twist in the wind.

I'm looking for a government--I feel like Diogenes with the lamp. The Liberal government didn't do; the NDP government didn't do it. I'm afraid that lamp's still going to keep shining, because this government with this bill isn't going to whip these scoundrels, these thieves, these highway robbers, into shape. Let's keep our fingers crossed.

Mr Sampson: Thank you for your presentation. If I can just boil down, in a very short period of time, the gist of your presentation, you really don't care about the tort access or the not tort access; you just

want to make sure that you have the benefits to deal with your injury, is that correct? Do you really care how that comes to you?

Ms Buchanan: I do in a sense, but, no, I don't. As long as what I am told on paper I am entitled to is what actually materializes; that's sufficient for me. I don't see that the new proposed legislation offers much more differences than the other three, other than changing the dollar amounts around. But it doesn't matter if they present it to you and don't ever have the intention of paying it.

Mr Sampson: Right. You've been through this three times. What, in your sense, is the frustration that the industry has in paying? Is it just that they don't want to pay, they don't care? Is that what you sense, or do they have some lack of confidence with the treatment that's being provided? Where's the breakdown in communication?

Ms Buchanan: They have adequate medical evidence to substantiate my claim. They have a number of experts and medical expertise. They have boxes of files of unrefutable testing that prove my medical condition. The insurance company can quite simply say that it didn't come from the specialist, it came from the family physician, so that's not sufficient, "We don't have to pay for these damages because there's some degree of discrepancy whether this was caused by accident 1, 2 or 3." There's not a magic dividing line where my pain from number 1 stopped and the pain from accident 2 started. There's a lot of grey area as to the continuing injuries.

Mr Sampson: Which caused which.

Ms Buchanan: Yes. So rather than pointing a finger and saying accident 2 is responsible or accident 1 is responsible, everybody has just opted that no one is responsible, so no one is paying until this is resolved through the courts. Under the current legislation, under no-fault benefits, this accident was a no-fault accident. I was in hospital for 11 weeks. they are not paying me anything.

Mr Sampson: I think the no-fault is an unfortunate misnomer in the current legislation. As somebody said to me the other day, it's not no-fault, it's everybody's fault.

Ms Buchanan: Due to my injuries from my second accident, I wasn't working just prior to this third accident, so the no-fault now is saying that they don't have to pay me lost wages because I wasn't working at the time of the accident.

Ms Castrilli: Thank you very much, Ms Buchanan. I was struck by something you said early on and you've repeated in your paper, that you are afraid of reprisals, and like you, many others.

Ms Buchanan: Yes.

Ms Castrilli: What is the nature of the threats and why would you be afraid?

Ms Buchanan: I have been told that if I go public with my case, the insurance can cut me off, that when my case comes to trial, they can use this against me, that anything that I have publicly said or put in writing will be used against me.

Ms Castrilli: I certainly don't want to ask you any details of your accidents on that basis, but it seems to me, for the record, Mr Chair, that kind of attitude in a free and democratic society is simply not acceptable and I just want to go on record as saying that.

Ms Buchanan: As a registered massage therapist, I have ample files to pick from, as the bulk of our practice is motor vehicle accidents. Every patient I contacted to write something to provide for this hearing was terrified of repercussions from their insurance company or their lawyer, and quite frankly, refused to do it based on that.

Ms Castrilli: I find that unfathomable and unacceptable.

The Chair: Thank you very much, Ms Buchanan. We appreciate your presentation to our committee.

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DALE HEAD INJURY SERVICES

The Chair: We now welcome the Dale Head Injury Services, Ms Delorme and Mr Gilby. Welcome, Ms Delorme; welcome back, Mr Gilby. We have 20 minutes. I think you're aware of the procedures. Please begin.

Mr Nigel Gilby: I'm only here because I happen to be the chairperson of Dale Head Injury Services, which is a non-profit organization that deals with traumatic head injuries and treatment. Ms Delorme, who is the director, will be the person speaking. I'm here in a hand-holding capacity only and to perhaps answer some questions if they get into the legal realm.

Ms Deborah Delorme: Thank you, Nigel. Thank you to the committee today for the opportunity to speak on the proposed automobile insurance legislation. Just to give you a bit of background on Dale Head Injury Services, we're a non-profit community-based organization. We're located in London, but we serve individuals who have experienced a traumatic brain injury throughout southwestern Ontario.

We have a volunteer board of directors, of which Mr Gilby is the chair, and this organization has been in operation for the last 12 years. We're currently serving 57 individuals in a variety of different ways. We provide a wide range of services for this population.

We are funded under the Ministry of Health. However, we also bill insurance companies and Workers' Compensation Board for services that we provide to automobile accident victims as well as injuries sustained in the workplace. So we have a number of different funding sources.

We view the draft legislation put forward as an improvement over the previous drafts, but we still have some concerns that there are aspects of the legislation that are not going to meet the very unique and specific needs of individuals who have sustained a traumatic brain injury.

Just to summarize what we're going to talk about: the issues around the proposed definition of "catastrophic impairment," which I know you've already heard about; the application procedures and how they may in fact impede the speedy delivery of needed rehabilitation; the adequacy of the attendant care services definition as it currently is put forward and the inadequacy of the proposed coverage for people who have sustained a traumatic brain injury in particular; and finally, we'd like to talk about the importance of building some accountability into the designated assessment centres and their overseeing committee, because that's an issue of concern to us.

I feel that in order to understand the position that we're taking, it's important to spend a bit of time trying to get a handle on the traumatic brain injury and its effects, because it is a very unique and specialized area. Even a mild or a moderate brain injury can leave an individual with a very complex array of impairments which can devastate not only their lives but the lives of their family members.

You may have already heard about the impairments. I just want to review some of the major ones, such as the cognitive impairments that people can experience in memory, judgement, problem-solving, language and speech and a myriad of other cognitive functions that can be impaired.

As well, there are physical impairments in ambulation, balance, some sensory activities can be impaired through brain injury, there can often be severe chronic pain accompanying a brain injury and as well many people are dealing with behavioural issues such as aggression, there can be sexual inappropriateness, there can be apathy, there can be lack of initiative, there can be impulsiveness, there can be a wide range of very, almost embarrassing social skill problems that follow a traumatic brain injury.

These impairments have a huge impact on the individual, because they can remember their former self, their pre-accident, active self in which they were a functioning member of society. As a result of that, it can leave an individual not only with this array of impairments and disabilities, but also it can lead to

very severe depression. That can in turn lead to substance abuse, and the potential for substance abuse is much greater with this population because of these issues. As well, the suicide rate is higher among this population because of the devastating effect of the injury.

It's also very important to note that the majority of these injuries occur to individuals who are between the ages of 16 and 35, so we're talking a very young population. The other piece is that these people have relatively normal lifespans, so you're talking about a group of people who are injured early and can live a fairly normal length of time.

In the absence of appropriate and timely treatment, the lives of these people are characterized by family breakdown, unemployability, often great isolation from their family and friends--a case in point, of course, is the people who are down in the US, and some of them have been down there for years--and obviously dependency on others to get through their day.

This is a great financial burden and it ultimately will fall on the system and on the taxpayers to support these individuals, without timely and appropriate rehabilitation. However, our experience has been that with appropriate treatment, with timely treatment, these people can resume normalized lives, if not their normal pre-accident life, and they can engage in meaningful activity. They can get re-employed. They can do volunteer work. They can make a contribution to society. They can maintain their family connections. However, it depends on the accessibility of proper treatment, and with the appropriate treatment, the burden of care to society can ultimately be reduced as well.

However, with this legislation, what we're concerned about is that there are some aspects which will block the delivery of appropriate and timely treatment to these people, and I'll just go through them for you now. The first one has to do with the definition of "catastrophic impairment." I understand that you have heard quite a bit about the Glasgow coma scale and its inappropriateness as a tool. I just want to make sure that you're clear on the difference between the Glasgow coma scale and the Glasgow outcome scale, because I think it's being interchanged occasionally. The Glasgow coma scale is used at time of coma to measure the condition of the patient at the time of the injury; the Glasgow outcome scale identifies the outcomes of the person following the injury in terms of their functional skills and their ability to get through their day.

I'm not going to belabour the issue of the Glasgow coma scale as an inappropriate tool, but I decided not to just skip over it, because I do think that the more often you hear about this tool, the more it's going to sink in that it really would not be at all an appropriate tool to use. I do have some more information on the Glasgow outcome scale for your reference in the brief.

Our second concern is that the proposed legislation doesn't permit access soon enough, which is immediate, for critical rehabilitation services and supports. We're concerned that the application procedures may actually lead to a lengthy wait before the start of rehabilitation, and in our experience, and I would venture to guess Dr Delaney would agree, a lot of the recovery can occur between the first 12 and 24 months, certainly the physical recovery, and that is a critical period to deliver needed rehabilitation services. If those services aren't available, what has been lost is a potentially rich period of rehabilitation which can't be recovered.

Also, with the absence of appropriate rehabilitation during these not acute phases but early stages, the potential for the development of severe behavioural disorders is greater. That's the time when we'll see behaviours start to manifest themselves which, with appropriate treatment, would not have surfaced, and it's those behavioural disorders that in fact are the very expensive ones in terms of providing treatment. Those are the ones that cost the very big dollars.

What we feel is that the legislation should provide for a mandatory payment of initial rehabilitation costs for victims of traumatic brain injury--I think we're speaking specifically of that group--if that can be built in. We'd like to see it somewhat similar in principle to the mandatory prepayment provisions for physiotherapy and chiropractic treatments which are set out in section 42 of the regulations, but we'd like to see it broadened to include what we feel are the necessary treatments for traumatic brain injury, which can include, but are not limited to, things such as speech and language therapy, occupational therapy, behavioural management, a very important one, psychological services, again very important, as

is family counselling and family education. Those are the services that are going to decrease the huge impact that's going to land on these family members down the road.

Thirdly, in the proposed regulations, the attendant care provisions and definitions are inadequate, in our view. I don't feel that the term itself is clearly defined and would ask that this be done, and with regard to the definition that is arrived at, I'm concerned that the definition may somehow be viewed or confined to attendant care activities that have to do with physical support for individuals, such as assisting them with hygiene, toileting, dressing, that sort of thing.

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This is often how attendant care is viewed, and what we found in the field of traumatic brain injury is that people don't recognize that attendant care can simply be a person who can serve as almost a prosthetic device for an individual who has cognitive or behavioural impairments. A person even with a severe traumatic brain injury actually--not all of them, but some--can get through their day and manage to feed themselves and perform their hygiene activities and dress without an attendant. However, they can't manage to maintain their appropriate behaviours that they've learned through rehabilitation. They may not be able to problem-solve or remember what the next activity is or even have the initiative to get up and do whatever it is they need to do. Those are the things that a support person does, and we call it personal support as opposed to attendant care, and those services are absolutely essential for people who have had a traumatic brain injury, so we'd really like to see that included in the definition.

Also, further, with regard to attendant care, we're concerned that the \$6,000 limit for people who've had a catastrophic injury may in some cases be inadequate, and I'd like to really stress here that this would be a very small proportion of injured victims who would not be able to be appropriately supported with a \$6,000 attendant care ceiling, but there will be some who will require 24-hour care or support and \$6,000, according to my math, isn't sufficient to cover more than about 13 hours of support. I suppose if you narrowed it down or drove the salary down to a minimum wage level you could get 24 hours of support for somebody; however, I believe that in order to appropriately support somebody with a brain injury, you'd need to have some level of expertise and training. You can't just bring in somebody got laid off at McDonald's and ask them to come in and support somebody with severe traumatic brain injury who may have behavioural issues and cognitive issues, so there needs to be a reasonable salary for these people.

You need to know that there will be some who won't be able to be supported with that ceiling, and the concern is that at that point, they're still going to need support and they're probably going to end up in the institutional correctional system. Somehow the taxpayer or the province is going to have to assume the burden of care for those individuals, and they will not be appropriately served in those institutions.

We're also concerned that some of the care costs, the medical and rehabilitation care costs, for individuals who have a catastrophic injury may not be sufficient over time, because there does not seem to be an inflationary increase built into them, and we're concerned that over a period of time, even if they don't access those funds, the funding will not last long enough for them to get the medical and rehabilitative services that they need.

The second-to-last point is with regard to the designated assessment centres. We are pleased to see that there is a committee to oversee their operation. However, we would like to see, in light of the fact that the DACs are going to probably be evaluating the efficacy and appropriateness of treatment plans developed by service providers, that there be some measure built in to oversee the activities of the DACs and make sure that they are in fact making good recommendations with regard to these issues and that they're accountable for the service that they provide.

Finally, I'd really like to emphasize the importance of developing standards of care and some sort of accrediting body for service providers in this province, particularly with the increased number of private practitioners in practice now providing services. There are absolutely no standards in place, and it's questionable whether all the services that are being delivered are effective and needed. There is a committee that's doing this now. The PABIAC committee is working on this, and I would endorse the work of that committee and ask that this group work together with them to see that it's in place.

I think that's about it. I don't need to go through my conclusions. Are there any questions?

Mrs Marland: Thank you, Ms Delorme. You're absolutely right when you say you know that we've heard from other head injury associations and groups around the province, but it is very important for us to have that input, and repetitively, as well, because when we started last week, I hadn't heard of the Glasgow coma scale. I don't know how many of my colleagues had, but I hadn't, and in the same presentation we also learned about the outcome scale. I followed that particular group out into the hall to ask them to explain to me where else in the world this was used and what other reference points we could have. So the more we hear, the more we learn, and I appreciate your effort.

I just have a very fast question. When I look at the Dale Head Injury Services, and you say that you receive funding from the Ministry of Health, I'm wondering how much funding you do get from the Ministry of Health.

Ms Delorme: Our funding is in the neighbourhood of about \$1.5 million per year.

Mrs Marland: Then you also bill the insurance companies back, and sometimes the WCB, for the services, is what you said in the opening.

Ms Delorme: That's right.

Mrs Marland: Who do you think looked after these victims of MVAs before Dale Head Injury Services came into being?

Ms Delorme: I would venture to guess that many people, before there were services available for them, ended up in the streets. Some of them ended up in the correctional system. We've had many people come through our doors who have spent years in psychiatric institutions because there was no other place for them; chronic care wards of hospitals, nursing homes. Some of them are at home, living in unbelievable conditions with families that are going through enormous stress.

Ms Castrilli: Thank you very much for being here today. It's nice to see Mr Gilby again.

Mr Gilby, I'm going to pose this question because we've had a fair bit of discussion about clinics such as these and the whole issue of referral and conflict of interest. I note with some interest that you are chair of the board of governors. You are coincidentally a personal injury lawyer who has a very busy practice according to your own announcement earlier on. I'm just wondering how your clinic handles the issue of conflict of interest. Do you, for instance, refer some of your clients to the clinic? Is there disclosure? Is there a prohibition? I'm not quite sure what the practice is.

Mr Gilby: The answer to that question is, in all the years that I've been involved, the number of clients I've had go through is about two or three in number. It's not very many. It's done on referral generally from medical practitioners in that facility. The fact that I'm involved is known; it's disclosed. It's also certainly known to the insurance industry as well as to the defence lawyers.

I got involved in this as one of the founding board members long before we had any of these systems in place because there was clearly a need for a facility, and through funding of a private source we were able to start what was then Dale Home and is now Dale Services. I've stayed on as a board member. I think it's important, because I benefit from the system literally because that's how I earn my income, representing people who are injured in accidents, to give something back. I quite frankly see this as my way to give something back, by committing my time and my expertise in helping to deal with Dale Services in the management of the facility. I think we've been very effective in doing that.

Ms Castrilli: So disclosure is the way you handle it?

Mr Gilby: Yes.

The Chair: I thank Dale Head Injury Services, Ms Delorme and Mr Gilby, for your presentation today.

We appreciate it.

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CRAIG BROWN

The Chair: We now have Professor Craig Brown, faculty of law, University of Western Ontario. Welcome to the standing committee.

Mr Craig Brown: Thanks, Mr Chairman. I understand I'm the last of what must seem like a long list today.

The Chair: As we get to the end we're more anxious, and of course we're more attentive as well.

Mr Craig Brown: I wish my students were the same way.

The Chair: We'll charge the committee with being more attentive on this one.

Mr Craig Brown: I bear that in mind and I will endeavour to be brief. I've only a few points that I would like to make and I don't have anything additional for you to read.

My interest in this area is both academic and professional. I teach and research and write in the area of insurance law. In particular, I've had an interest in automobile insurance over my career as well. I've also served as an arbitrator for the Insurance Commission of Ontario, arbitrating disputes under the OMPP. They had a pilot project for part-timers last summer and I worked for them in that capacity. I have also served as a consultant, primarily to the IBC, not recently, but I did serve as a consultant with them during the 1980s when no-fault was a fresh issue. So it's those perspectives that I bring to this.

I should say that, generally speaking, I support the thrust of this legislation. The structure of it in fact resembles a proposal that I helped IBC put together in 1987. I guess I feel a little vindicated in the sense that it's coming back after all these years in the form that we initially recommended, more or less, subject to a couple of details that I will talk about.

I agree that what we are appropriately on about is finding the right balance between containing costs but providing fair compensation to the victims of accidents, and I appreciate that this legislation represents an attempt to do that. However, there are one or two areas in which I think the balance is slightly out of kilter that I would recommend review of.

In particular, I want to really talk only about the restrictions on tort rights, or the removal of restrictions on tort rights, under what will be section 267.4. Basically, that's what I'm going to concentrate my comments on.

I want to talk first about the ability to sue for excess economic loss, which in principle I agree with and which was part of this proposal that we made back in 1987. I'm a little concerned with the way in which it's worded, because it seems to exclude a couple of categories of damages which I think may have fallen between the gaps. This just may be that I'm interpreting the wording incorrectly, but I think it's fair to say that at the very least it's unclear and possibly ambiguous. I would recommend that some attention be paid to subsection (2) in terms of defining when somebody can sue for excess economic loss.

The first area of concern I have in that regard is that it seems to exclude recovery in tort for loss of earning capacity. In terms of income loss, it seems to say you can only get excess lost income up to 85% of that actual loss, but it doesn't talk about loss of earning capacity. Even though I understand that the regulations are going further to refine this, and my concern may be taken care of then, my concern arises because as term, loss of income is different from loss of earning capacity.

Loss of earning capacity arises, for example, when you have somebody who is at the time of the accident, perhaps a medical student, not earning any money, and therefore entitled only to the \$185 a week under the no-fault benefits, with no excess income loss, as I read that term, to sue for. Yet what has

been taken away from that person, if that person has been rendered, say, a quadriplegic, is a lifetime of the earning capacity he would have got as a physician. Tort law recognizes in some, albeit limited, circumstances the right to sue for those kinds of damages.

What we would be doing, if I'm reading this legislation correctly, is basically freezing someone at the time when they are injured in terms of their income status, either at \$185--it applies equally to somebody on the way up the ladder who happens to be injured at a time when they are relatively low on that ladder but it was fairly certain that they would have gone on, through promotions and so forth, to earn a lot more. Now the accident has deprived them of the opportunity to earn that extra, and I think that tort law recognizes that in some limited circumstances. That element of tort law seems to have been removed by this wording.

The other situation in which loss of earning capacity arises is where a person, after two years, is able to go back into the workforce and so doesn't qualify for the ongoing post-104-week benefit, but can't go back to his or her own job and has to take a job at a lower pay. They've lost the capacity to earn what they formerly were able to earn. So after two years there's a substantial drop: not entitled to any no-fault benefits; can only earn something much less. Tort law, if it wasn't restricted by the wording that's currently in subsection (2), would allow plaintiffs in the appropriate case to recover that difference if they could establish that that's what indeed they had lost.

It may not be that that's going to arise in all that many cases, but there are some cases where it will, and I think it's a significant loss that should be addressed. As things are presently drafted, it falls between the gaps of the no-fault benefits and what is allowed to be sued for in tort. So I would recommend that you revisit that topic of loss of earning capacity.

The other category of loss which seems to be excluded by the present wording of that section is a claim by a dependant in the event of a fatality. Subsection (1) seems to me to say that all tort cases are banned or barred in cases of personal injury or death except when it comes to economic loss from income loss or certain medical and rehabilitation benefits, which don't seem to me to capture the loss suffered by a dependent child or a dependent spouse when the breadwinner is killed. The no-fault benefits provide only \$25,000. I think that's a big and serious gap and it should be specifically allowed that in the case of death the dependants can recover.

I suspect that may be an oversight, because in subsection (3), which deals with non-pecuniary loss, the specific reference is to claims under the Family Law Act, which is the kind of claim that I'm now talking about, but there's no reference in subsection (2) to claims under the Family Law Act, which covers dependants' claims. I would urge that you revisit that, and if I'm wrong in my interpretation, that you think about clarifying it so that those heads of damages are included, the dependants' claim under the Family Law Act, for economic loss as well as for non-economic loss.

The concerns then are that the renewed right to sue is defined in too narrow terms, given at least a couple of categories of important losses that people might face in auto accidents.

As I said before, I understand we're in a balancing process here and I appreciate that. The way I would do it, though, is while I might loosen up on the tort rights for economic loss, I would recommend tightening even further the threshold for non-economic loss and I would add the word "permanent" into your threshold.

The reason is not just to do with cost, although that's significant. I'm sure you've seen all the data dating back to the Osborne report which showed that in pre-no-fault times, more than half of the money that went in tort payments was in the form of general damages in amounts of under \$20,000. So if you can eliminate those, you eliminate a big potential cost in the system.

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But it's not just a cost question. There's a question of principle here as well, I think, that supports dividing the line between those permanently injured and those not permanently injured for the purposes of non-pecuniary loss.

Remember what the phenomena are that we're addressing with non-pecuniary loss: pain and suffering and loss of facility and the trauma of having to adjust your life to drastic new circumstances and so forth. The no-fault provisions, particularly the rehab provisions and also the medical expense provisions, go some way to addressing those phenomena directly and reduce the need, in my view, for general damages in those kinds of cases. However, we have to accept that there are some people for whom all the rehabilitation in the world, all the medical care in the world, will not restore them to full health. Those are the people who are permanently injured, and it's appropriate that those people have access to compensation for that loss. But people who are going to be restored--by definition, those not permanently injured--those are people who I think are adequately taken care of with (a) the no-fault benefits and (b) the ability to sue for excess expenses for medical and rehab.

We can argue about whether it's proper to deprive certain people of damage and so forth, but as I said, we're talking about a balance. We have to draw the line somewhere and save some cost somewhere and sort out priorities, and in my view the priority is economic loss along the lines that I talked about just a few minutes ago.

So I would suggest revisiting those two aspects of the threshold. It's really readjusting that balance, which I agree is what you're trying to achieve.

The only other matter that I want to raise is to do with dispute settlement, in particular the proposal to add the possibility of private arbitration. I confess this is a little self-serving since I have served as a part-time arbitrator for the OIC and would welcome more work.

Mr Sampson: You are allowed.

Mr Jim Brown: Everybody else is self-serving. Join the crowd.

Mr Craig Brown: I would say this further in favour of it, though. I think that it helps in a number of situations to have people who are local available to conduct these hearings, because--and this was my experience last summer--it provided for much more flexibility, quicker response to the request for an arbitration, a quicker turnaround of the decision than is possible through the centralized office in Toronto. I think that whatever system there is, there should be accommodation for this option of arbitration.

However, having said that, I have to say that there are a couple of potential problems with the model as drafted, that is, simply saying you can arbitrate under the Arbitrations Act.

One is to do with cost. Normally when we think of arbitration we think of something that's cheaper, but from the point of view of the parties, this will possibly be a more expensive option than the present option under the OIC. That is partly because private arbitrators tend to charge more. The amount payable that I was being paid last summer was \$450 a day, and I know private arbitrators charge about \$200-plus an hour. So it's likely to be a more costly enterprise.

Secondly, under the Arbitrations Act, there's much more freedom for the arbitrator to award costs against the applicant, against the insured, whereas that tends to happen very rarely, if at all, under the OIC system. In addition to that, the Arbitrations Act allows either side to appeal to a court and basically start the whole thing over again.

For those kinds of reasons, I would suspect that there would be a tendency for people not to agree, for insureds not to agree to that system, as opposed to the OIC system. So you might want to think about a schedule of fees and some other rules, perhaps, that pertain to private arbitrations in this field to kind of even the playing field a little bit in terms of the options that people have.

The other aspect, the final point in relation to arbitration, is that the more you go to ad hoc private arbitrators under the Arbitrations Act, the more likely you are to have inconsistency from award to award. One of the things in favour of the present system with the OIC is that there are people who talk to each other all the time and there's a relative consistency. It took a while to achieve that, but now I think

there's relative consistency in terms of what disability means and all the other things under the regulations. At the very least, I think there should be a requirement that private arbitrators be required to submit their awards for publication with all of the others at the OIC and possibly allow for some other kind of interaction so there's some consistency.

The Chair: Thank you very much, Professor Brown. I know Ms Castrilli wants to ask a question.

Ms Castrilli: You do, do you, sir? Thank you.

Thank you very much, Professor Brown. I'm interested in the statement that you made that you had given advice to the IBC in 1988, and I wondered what you had advised with respect to the excluded damages that you'd find under this legislation. Was that part of the package?

Mr Craig Brown: We simply said that you would be free to sue for any economic loss that wasn't already covered by the no-fault benefits, period.

Ms Castrilli: That's pretty much the position that was taken under OMPP, was it not?

Mr Craig Brown: No, under OMPP you could only sue at all if you crossed the threshold of permanent and serious, which applied both to non-economic and economic loss. What we recommended was that you apply that permanent and serious threshold only to non-economic loss and that that person be free to pursue excess economic loss unrestricted, except it was only in excess of what you had already received from no-fault.

Ms Castrilli: What would you do in the case of fatalities? That's one of the areas which you mention. There is now, what, a \$25,000 benefit that's paid on the death of a spouse, and there's virtually nothing for loss of income and nothing for dependants. What would your recommendation be?

Mr Craig Brown: People now have a choice to buy life insurance, so you don't need to worry about the no-fault benefits, I don't think. But I think that it's still appropriate to have a tort right for a fatality claim. For example, if I was killed tomorrow and this system was in effect, my children would be able to recover from the at-fault person's insurance company something approximating the level of income I provide for them now. That's an important gap that, as I read the legislation, it leaves.

Mr Sampson: With respect to the changing of the threshold, going back to the OMPP threshold for the pain and suffering or general damages category, I think you'll find that that will have less of an impact on the lost costs than you might be expecting. In fact, to a large degree, according to the preliminary numbers we saw when we took a look at various costing models, it was almost negligible, because of the fact that we had changed dramatically the economic threshold, from \$10,000 to \$15,000.

Mr Craig Brown: That may be so. The other thing that worries me a little bit about it is that the definition of serious, as we're seeing from the case law already, is kind of fluid. The other thing is that I would predict you would see a kind of inflation in the value of pain and suffering, which would gradually minimize the impact of the deductible.

Mr Sampson: The dilemma is that over time economic deductibles get eroded, but also because of the way in which we've got a wonderful court system, so do the verbal thresholds get eroded. It happens. So it's a matter of a catch-up periodically to make sure the original thrust of the deductible or the thresholds remains valid, and that's why we've suggested two-year reviews of such things as the economic and verbal threshold on items such as the pain and suffering category.

Your comment with respect to a fee schedule for private arbitration: It's a very good comment. I suspect, though, that they might not particularly like us to go to the average fee that the OIC is charging. But anyhow, thank you very much.

Mr Jim Brown: Mr Chairman, can I ask Mr Kormos's question?

Mr Sampson: Only if you have a 10-minute preamble.

Mr Jim Brown: I can't talk that long.

Ms Castrilli: Could you be that partisan?

Mr Jim Brown: Just a quick quickie. You participated in 1987-88. Presumably you did it to save money. What happened? What went wrong? Because we didn't.

Mr Craig Brown: You want the story of 1987?

The Chair: I thought you said that was a short question.

Mr Jim Brown: It was a short question. What went wrong? You did it to save money, and here all kinds of costs got added in. I'm curious. What happened?

Mr Craig Brown: This was a proposal made to Justice Osborne in his committee of inquiry, and he did not accept that it was necessary to have a threshold even for non-pecuniary loss.

Mr Jim Brown: I mean, no-fault: What happened?

The Chair: Thank you--

Mr Jim Brown: We'll talk after.

Mr Craig Brown: Okay.

The Chair: I'd like to thank you, Professor Brown, for your presentation today.

I'd like to thank the committee for their cooperation. Mr Crozier, did you have a comment?

Mr Crozier: Yes, I do, and it's very quick. It's rather moot after eight months, I think, but just for the record, there was a document tabled, and I don't have the benefit of Hansard, but I think when Mr Wettlaufer mentioned it, it was from the Liberal plan. I think he said 15% was promised in savings and I don't see that in here. But, as I say, it's a little moot after all this time.

But I would like to say on behalf of the Liberal caucus, Ms Castrilli, Monte Kwinter, Mr Phillips and I, that I think these last two weeks have been beneficial. In some way I hope we've added to it and that we will in the future, and I want to thank Mr Sampson, representing the ministry. You, sir, as the Chairperson, you've done a great job, and certainly to the staff, Franco and his people. In my own short two years here, it's been one of the most non-partisan committees, with a few exceptions who shall remain unnamed.

Mr Sampson: You don't want to put them on record, do you, the exceptions?

Mr Crozier: It has been one of the more non-partisan committees and I hope these two weeks will end up with something that we're all working towards.

The Chair: Thank you very much, and I do appreciate the committee's cooperation in making it non-partisan and in its cooperation with me.

This committee will stand adjourned until Monday, March 4, at 9:30 am in a committee room to be determined at Queen's Park.

The committee adjourned at 1703.

Calendar | Calendrier

Standing committee on finance and economic affairs

 (36 Parl.
1st Sess.)

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Monday 4 March 1996

Pre-budget consultations
STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS
Chair / Président: Chudleigh, Ted (Halton North / -Nord PC)

Vice-Chair / Vice-Président: Hudak, Tim (Niagara South / -Sud PC)

Arnott, Ted (Wellington PC)

*Brown, Jim (Scarborough West / -Ouest PC)

*Castrilli, Annamarie (Downsview L)

*Chudleigh, Ted (Halton North / -Nord PC)

*Ford, Douglas B. (Etobicoke-Humber PC)

*Hudak, Tim (Niagara South / -Sud PC)

Kwinter, Monte (Wilson Heights L)

*Lankin, Frances (Beaches-Woodbine ND)

Martiniuk, Gerry (Cambridge PC)

*Phillips, Gerry (Scarborough-Agincourt L)

Sampson, Rob (Mississauga West / -Ouest PC)

*Silipo, Tony (Dovercourt ND)

*Spina, Joseph (Brampton North / -Nord PC)

*Wettlaufer, Wayne (Kitchener PC)

**In attendance / présents*
Substitutions present / Membres remplaçants présents:

Bassett, Isabel (St Andrew-St Patrick PC) for Mr Arnott

Carr, Gary (Oakville South / -Sud PC) for Mr Sampson

Grandmaître, Bernard (Ottawa East / -Est L) for Mr Kwinter

Marland, Margaret (Mississauga South / -Sud PC) for Mr Martiniuk

Clerk / Greffier: Franco Carrozza

Staff / Personnel: Alison Drummond, research officer, Legislative Research Service

The committee met at 0932 in committee room 1.
PRE-BUDGET CONSULTATIONS

The Chair (Mr Ted Chudleigh): If we could call the meeting to order, we have a full day in front of us. I'd welcome all the roadies back to home. If we could deal with the first item of business, in that we would make some arrangements for the timing of today, we are commencing at 9:30 or thereabouts and we'll break at 12 for lunch, I'm assuming, and reconvene at--the Chair is open to suggestions.

Mrs Margaret Marland (Mississauga South): When we're drafting reports, I think it's normally 2 to 4 in the afternoon.

The Chair: Fine, we will meet from 2 to 4 this afternoon. No disagreement on that issue, I take it. On Thursday, we will start--

Mrs Marland: At 10.

The Chair: A suggestion of 10 to 12.

Mrs Marland: I'm only going by what we've done every other year.

The Chair: A suggestion of 10 to 12 in the morning session.

Mrs Marland: And 2 to 4 in the afternoon.

The Chair: And 2 to 4 in the afternoon. Any objection? Fine, those will be the hours for Thursday.

You all have had a copy of a draft report that was submitted by Alison Drummond. I understand that the tradition is to start on page 1 and to move through the report. If there is no objection to that, that's how I will proceed. Comments?

Ms Frances Lankin (Beaches-Woodbine): There's no objection to that. I just want to give my apologies early, in that I know other people were on the road, but I didn't actually physically get a copy of it from my office until just a few minutes ago. So I'm going to be going through it a first time as we go through it page by page. My apologies to people.

The Chair: Are you a fast reader?

Ms Lankin: Yes, I'm a fast reader, but it might make my response a little slower than it would have been otherwise.

Mr Wayne Wettlaufer (Kitchener): Frances, we were on that same committee. We understand.

The Chair: If we might proceed then, I would ask the researcher to be involved in this process and I would ask for comments on page 1. Any additions or deletions?

Mr Gerry Phillips (Scarborough-Agincourt): Just in the first paragraph, on the projected deficit of \$9.3 billion, I think the government's indicated that it will go up when it finalizes some write-offs. I'm just curious as to how much those write-offs might be. The reason I raise this is because in the third-quarter report they talk about how there will be write-offs for student assistance and the Ontario Development Corp. Then in another document, the 18-K report, they talk about how it will go up as a result of severance costs. I wonder if it may be useful just to get some idea of how much the government figures the deficit might go above the \$9.3 billion, because I'd always assumed that it was not significant, but I see in the 18-K report that it may be. I wonder if by Thursday we might get some indication from the government of the size of the write-offs because, as I say, I thought the \$9.3-billion deficit was probably on track and then I've since look at some other numbers.

The Chair: Comments from the government?

Ms Isabel Bassett (St Andrew-St Patrick): I think we could probably look at those figures, see if we can get something. I can't promise that we'll get them, but we'll look for them, Mr Phillips.

I have a couple of points of correction. At the bottom of the first paragraph, "10% annual rate"; the correction should be "9.8%." Then in the second paragraph, the sixth line, "GDP and 99,000 jobs," it should be "100,000." So if you could correct that.

Ms Alison Drummond: I'm sorry about that. The numbers kind of--the officials on Hansard haven't had--

Ms Bassett: Thank you, Alison, for all you've done. It's a huge job. I want you to know that. So as we

go through, if we're correcting, having written some stuff myself, you think every correction is a personal attack. It's not at all.

Ms Drummond: Oh no, no.

The Chair: Please don't be sensitive.

Ms Drummond: But I wasn't sure and I didn't have a chance to check.

Ms Bassett: I wasn't sure either, so that's what it is. I have one other thing, but Frances, you do yours if you want and then--

The Chair: Did you have one other?

Ms Bassett: I do have one other, but it's in the next--I want to add some material. Should I do it now?

Mrs Marland: Just before you do, Isabel, on behalf of the committee, Alison, I wanted to congratulate you on drafting this report. We appreciate what an impossible task it is when you start after hearing that number of deputations and that much input from the committee members, so we do commend you for the drafting of this report.

Ms Drummond: Thank you.

0940

The Chair: Ms Lankin, did you have a comment?

Ms Lankin: I did, and I'm trying to think of a constructive way to suggest this. The lead-in to this talks about, "As is traditionally done in pre-budget hearings...there was an overview of the...economy and an assessment of whether predicted revenues and expenditures are on track." In fact, I think during the first couple of days of the hearings I made a point on a number of occasions that in fact we weren't presented with the traditional kind of information and that we did not have any medium- or long-term projections on revenues or expenditures and whether they were on track. Everything that we had was related to the immediate fiscal year. I would appreciate it if that beginning could be expressed, that first sentence specifically, with respect to 1995-96 and if there could be an indication built into the opening first couple of paragraphs at some point that information with respect to medium- and longer-term projections on revenues and expenditures were not presented and the committee did not have that information in front of it.

Ms Drummond: The last sentence of the second paragraph does indicate that to some degree.

Ms Lankin: It does a little bit; you're right, Alison. In reading it, it felt to me like this was an expression of business as usual, and I didn't quite find it that way. I'm not looking for a political statement in here, but something that specifies that the information provided really was only for this fiscal year and that the committee did not have medium- or long-term numbers in front of it to consider and to make recommendations on.

Mrs Marland: But I think Alison has covered that off in the last sentence of the second paragraph.

Ms Lankin: It does say "expenditure projections for 1996 would not be provided until the budget," and that's true. I come back to my point that traditionally there are medium- and long-term numbers. Medium is not just one year, it's a two-year outlook, and long term is a three- to four-year outlook. Medium- and long-term numbers that are normally provided were not provided. So I'm just looking for an expression of the fact that information was not before the committee and therefore the committee's recommendations will not be able to take that into account.

The Chair: Mr Spina.

Mr Joseph Spina (Brampton North): I was wondering if perhaps, Frances, the assessment that was referred to "of whether the predicted revenues and expenditures are on track," whether that was of current revenues and expenditures as opposed to projected. I don't know if that would fit more in line with what your thoughts were with what really was presented.

Ms Lankin: Yes, it does.

Mr Spina: Yes, "whether current revenues and expenditures are on track."

Mr Phillips: Not to get things off on the wrong foot, but just in terms of process, our caucus found unacceptable--the only word I can use--the lack of information and certainly we'll want the report, in one form or another, to indicate that. Even if I were on the government side, I might also want to find a way that this process is dramatically improved. As I said when we started, I don't think you could ever run a company this way where you would not have some projections of revenue and expenditures. If any of you were on a board of directors, you would resign as a director because you'd say, "You're asking me to comment on things that you're really not providing me with information on." I just wanted to be totally crystal clear that this process has been unacceptable for us and it has to change. We'll be pushing to incorporate the recommendations of the Ontario Financial Review Commission in our recommendations because I think, generally speaking, that process would represent a substantial improvement over what we've been through here.

The other thing is, we have a difference of opinion about the word "encouraging" on job growth. I think 1995 was a really bad year for job growth in Ontario. There was no job growth from December to December. It's going to be impossible I think for us to niggle about words here, but just so you know the tone, we would not agree with the word "encouraging" on job growth; we would say it was "discouraging." I'm not sure how we're going to be able to resolve wordsmithing other than if the government members want that in there, then they'll have it in there, but we have a different view of the job thing.

Mr Gary Carr (Oakville South): I was just going to say in terms of the figures and so on--I hesitated to mention this during the hearings when the Liberals and the NDP were talking about wanting the figures--and I will say this very clearly, if I thought--and looking at last year's two dissenting reports--that some of that information would be used in putting something forward in terms of alternatives--this isn't to be critical of the Liberals in particular in the opposition, but if you look at the previous dissenting reports, we were very specific about what we wanted in terms of the tax cuts, everything.

It became part of our campaign, was outlined. Looking at the dissenting reports in the past, they've been very generic, and quite frankly--I don't say this to the Liberal Party in particular--if you look at it, any three of the political parties could have taken the Liberal dissenting report and agreed to it because it was very generic and not too specific.

If I have a criticism of the specifics of knowing what the numbers are and where we're going, in the past that has never led to anything to put forward. If I thought any of the figures coming forward would then be able to be a part of a dissenting--to take a look and say, "You shouldn't do the tax cuts because here's how much it's going to cost," quite frankly, putting all these numbers forward has never paid off to the opposition parties. I say that in asking the two parties to take a look at last year's report and ours, how specific we were in terms of what we were proposing to do.

I didn't want to start off on this sort of negative note as well, but the opposition parties asked for all the numbers and, let's be very honest, they want to have the numbers to embarrass the government, not to come forward with their own positive alternatives.

If it is going to be different this time, and I've sat on this committee for four years now, I guess, it will be the first time, and specifically with the Liberals, because as you know, last time we were goading you, "Come out with your plan, come out with your plan," and Elinor Caplan, who sat on the committee, said, "Wait for the election." We were 10 days into the election before we even got the plan put forward.

We were very clear, and last year you will remember this committee spent the entire time debating the Common Sense Revolution. In spite of the fact you might not always have agreed with it, we were very clear with the numbers. In terms of getting the numbers and projections, our financial people who came forward were able to make projections, and I think, looking at the numbers, you could make those projections of where we're going just as easily as the pundits and the economists did.

This year I am hoping, if we get into dissenting reports, that we will get something that is very specific about what you would do as an alternative to the government. If you don't like the tax cuts and you're going to say that the savings would be there, then let's be very specific. If you're going to start off asking for all this information and all the numbers and all the details, as if you were Finance minister, then I hope--and I would encourage you because I think we probably will have dissenting reports. We will look very closely. Last year's, looking at it, wasn't too bad. The one the year before that, I will say very clearly to the Liberals, the people who put that together, on our side, we quite frankly laughed at it. It was two pages and it wasn't worth--as I said to the folks this morning, if it had been a paper done at the university, quite frankly, it would have got a D.

If you're asking for all these numbers and you want to prepare an alternative, we on this side will be looking for something a little bit stronger in terms of what your dissenting report will be. I say that to the NDP members as well, because as I look at their report of last year, there was absolutely nothing in it to guide any government of any political stripe on where it should be going. If you're looking for the numbers, we will be looking very closely for what your alternatives will be over the next little while.

0950

Ms Lankin: I'm assuming that was for Hansard's purposes, because it really contributed very little to the discussion around this table. I find that amazing; you argue two sides to the point. Over the last few years, you know that the Finance minister of the day provided this committee with more information than the finance committee had ever been provided with in history with respect to projections on medium- and long-term revenues and expenditures. You shake your head, Mr Carr, but it's absolutely true. You can go back and look at the documentation.

You in fact make the point that your party provided a very specific alternative in response. With that information at hand, you were able to develop a very specific set of directions. Quite frankly, what you're saying to the parties over here is, "If you're asking for all of this, I hope we're going to get some content." I remind you, we didn't get the information we asked for from the Finance minister, so there's a bit of a problem at the very base of your argument. We've been asking for certain information in order to inform the recommendations we make. We haven't been provided with that information.

I'm not sure exactly what the Tory members of the committee will do with respect to their recommendation to the government, other than perhaps to stay the course; I don't know. But I know our caucus would be very interested, and having just come from the experience of four years in government, having perhaps been in a situation to have a bit more familiarity with the numbers and some of the challenges the government faces, and having had to go through some of those difficult decisions ourselves, we might be in a position, with the information, to provide you with the more detailed kind of comment and alternative you're asking for.

That would be our intent; that would be our desire; that would be our wish. But we haven't received the information, so I don't know that it's worth carrying on a long debate about that. All I'm asking with respect to the report is that it not give the impression that it's business as usual, that it indicate that the information we had before us was with respect to current information and the 1995-96 fiscal year and that we did not have medium- and long-term projections on expenditures and on revenues on which to make our recommendations.

I'll point out to you that this information is kind of important. You say we could make assumptions ourselves. You can't know, unless you're in government, whether or not the revenue side of the portfolio is performing as one would have expected. You can't know what is happening out there with a combination of the impact of job loss and the impact of the underground economy, whether or not tax revenues coming in are slower than projected.

You need that information to be provided by the people inside government, and that information, the revenue line, is very important to take a look at what the impact is on the deficit and then to determine whether you have to continue to make the cuts on the plan that your government had, whether they need to be deeper, whether you need to modify the tax cut as a result of lower than expected revenues, all of those things are balls in the air until the budget is actually tabled.

I just repeat that I think the information would have been helpful for the opposition and for government members to provide the kind of detailed response and alternative Mr Carr asks for. I don't disagree with him that this is an important thing for opposition members and government committee members to attempt to do, to provide detailed and informed recommendations to the government, but I point out that the information wasn't there and I would simply like a very low-key and non-partisan statement of that in the opening section of this report.

Mr Phillips: I found the government's response interesting. In my view, this is information the public has a right to have. I fundamentally disagree with the government that you can keep this information confidential, private, for your use only, and you'll release it to whoever you want to release it to. You are abusing your power. I can't force you to do that; only public opinion can. But to say, "If we thought you would make the use we want you to make of it, we would release it to you," is an insult.

You're going to do what you want to do. You did on Bill 26; you're going to do it here. You're going to say to the public, "You have no right to this information." I disagree fundamentally with you. You can get away with it now, but I guarantee you that you will not get away with it over the haul. We're following, frankly, the same process we went through on Bill 26, which is to say: "We're the government. We'll do whatever we want." This is public information. They are public servants who prepare this. You are releasing the information publicly that--you will not give us the information. I take Mr Carr at his word that you will contain all the information you want to and release only what you want to, to us. I assure you that won't last over your tenure.

We can move on. We'll register in very strong language that we found the information we got to date unacceptable.

Mr Carr: I want to say off the bat that this isn't a government position. I haven't talked to anybody about what I have said. This is Gary Carr's position. But I honestly believe this: If you look at our dissenting report, our whole program, the Common Sense Revolution, was put together based on information that we had that was available. It was in all the reports that were tabled.

What I honestly, truly believe, and I'm saying this because I know you, is that how you're trying to proceed is that because you don't have the information, you can't take a position. I'm saying that with the information out there, you should be able to put together some alternatives. I honestly, truly believe this, and it's not the government saying this, because I haven't even talked to anybody about this. I think the talk about the numbers is quite frankly an excuse for not having to take a position other than the opposition position, which is, "Don't do the cuts." I honestly, truly believe that. It isn't the government saying it; it's Gary Carr saying this.

I sat for four years on this committee, I've been through three of our Finance critics and the information that is out there, the information that was presented in the November economic statement, should be enough for you to present what you think needs to be done. What you're doing is typical of the games that were played, which we, I might submit to you, did not do in opposition. We took positions. We said: "Here it is. Here's what the tax cuts will be. We're going to go ahead with them." We outlined a position.

I say this in all sincerity to you: I honestly, truly believe that your talking about not giving you the numbers is an excuse for not presenting some alternatives. If last year the NDP presented them as well as everybody said they did, then if you take a look--and I will be critical of the Liberals--at the Liberal report, the dissenting opinion, if they had all the information, then surely there should have been a better report written than what was said in that, which all three parties--

Ms Lankin: That's not a good reason not to give the information.

Mr Carr: What I'm telling you is when you had the information, all the information that was possible, you didn't put anything together. I am saying quite clearly that I honestly, truly believe this is an excuse from opposition parties to not present alternatives. I honestly, truly believe that. I think there's enough information in there that if you truly want to present your alternatives, they can be done. I will say this on the November economic statement--you will know this; every economist tells you--within two months, a lot of those numbers change, but you cannot and will not, in my estimation--

Ms Lankin: How can we base our recommendations on them if we're not getting updated information?

Mr Carr: --get away with not presenting alternatives by using the excuse of the numbers, because I firmly, Frances, and I firmly, Gerry, believe the reason you are debating this is because you do not want to present alternatives. This isn't the government saying that; that's me.

Ms Lankin: You're wrong.

Mr Carr: I've sat four years on this, Frances, and you weren't even on this committee. You never even sat on this committee once--

Ms Lankin: I spent four and a half years at the cabinet table and I'm interested in alternatives. I'm interested in an alternative to what your government is doing to this economy. I really resent the implication of your statement.

Mr Carr: Do I have the floor, Mr Chairman, or not? I can argue and yell just as much as you can, Frances, probably better. If we're going to start into that--

The Chair: If I might suggest that--

Mr Carr: --we can start--

The Chair: Mr Carr, order, please.

Mr Carr: --and then I'll just yell.

The Chair: Mr Carr, just a moment. If I might suggest--

Mr Carr: We'll leave it at that, then.

The Chair: Mr Carr, could I interrupt you just a moment, please.

Today may not go just as smoothly as the last four weeks have gone. Perhaps I could ask the members--

Mr Bernard Grandmaître (Ottawa East): --an alternative?

The Chair: This is your first day on the committee, Mr Grandmaître. I don't want to blame you for this, but it's the first day you've been in the room. We do welcome you, however.

Mr Grandmaître: Thank you.

The Chair: I will maintain a list, and if you could catch my eye, I will put you on the list and perhaps we can have some order to it, if not decorum. I'd appreciate that.

Mr Carr, were you completing your remarks?

Mr Carr: I will wrap up. I just wanted to make the point and I probably shouldn't have started us off this way, to get going. But I will say this then: I--not the government--will be looking very clearly at the alternatives that are presented, because what I'm saying is nobody over the last four and a half years, either on the government side under the NDP or under the Liberal side, presented any alternatives, and I

will challenge anybody to read it. They're all public documents. Read it and tell me that you think there were any alternatives. Where we were different is we said, "No, you might not always agree but you will know very clearly where we stand," and that's what I'm challenging you to do. I will leave it at that.

1000

If you believe in the alternatives, Frances, at the end of the day, because I suspect we'll probably have a dissenting opinion unless you believe in spending cuts and tax cuts, then I will be, at the end of it, when the dissenting report comes in--maybe you'll prove me wrong, but I will read your report at the very end and see what clear alternatives you've got rather than just saying, "Don't cut, don't cut, don't cut."

I firmly believe, and I say this looking at both of you, you could present alternatives with the numbers that are in front of you today. I honestly, truly believe that. That isn't the government's position, that is my position, and I'll leave it at that, Mr Chairman.

Ms Bassett: I have a suggestion. Since the first part of page 1 talks about the economy, I feel strongly that we have to talk about the provincial fiscal picture and I suggest that just above "Expert Witnesses and Economists" we put an insert that would provide some of the material. Do you want me to read it out, Mr Chair?

The Chair: Please.

Ms Bassett: "In the past 10 years, the government spending has virtually doubled from \$28 billion in 1985-86 to \$57 billion in 1995-96. Ontario's accumulated debt has almost tripled from \$33 billion in 1985-86 to over \$97 billion in the fiscal year of 1995-96. Debt-to-GDP ratio stood at 14% in 1989-90; today the debt-to-GDP ratio stands at 30%. In 1995-96, Ontario's debt will be at \$97 billion, more than twice the level in 1990-91. By the year 2000-01, Ontario's debt will exceed \$120 billion.

"Ontario's debt per capita is at \$8,765 per person. It's the third highest among the provinces. Ontario's 1995-96 deficit is forecast at \$9.3 billion, at \$839 per person, the highest among the provinces. Seven provinces are forecasting budget surpluses this year. Ontario's public debt interest in 1995-96 is at \$8.9 billion or 18.8% of revenues. It's the second highest among all provinces after Nova Scotia at 19.3%."

I would like to put these in as an insert at the bottom of the section called "Economy."

Ms Annamarie Castrilli (Downsview): I don't have a comment on Ms Bassett's comment but I do want to go back for a moment to what Mr Carr said. Quite frankly, as a new member, I'm quite stunned by what you stated. We had well over 80 deputations that came here. They thought they were being asked to be part of a public process to give the government advice. They were not able to give the government adequate advice because there were no figures before these people.

Quite frankly, your suggestion that pundits were able to come up with the figures and so could we I think bears some discussion. I will remind you that Scotiabank, for instance, came here and said to us: "We don't know very much about the tax cut. We can't tell you what the impact will be. We don't know what will happen as a result. We're not sure it's going to affect jobs positively." I'm really stunned that you would show such flagrant disregard for public process, for individuals who came here in good faith and were actually asked to speak in a vacuum. That's not good public policy, in my view. It's not good governance.

Ms Lankin: First of all, briefly on Mr Carr's comments and then I would like to respond to Ms Bassett's. Let me say to you that I resent very deeply the tone and the way in which you're approaching this issue. I remind you again that whether or not I meet your test at the end of the day means very little to me. I will do the best that I can with the information that has been provided, and I tell you again, the information that has been provided every other year in the last three to four years that you've referred to was not provided to this committee. So there is a fundamental difference in the data that are before the committee and the amount of information that is available for us on which to base our recommendations.

Secondly, in your response, you indicated very clearly your concern that government members in the

previous government hadn't provided alternatives to their government's budget. I'll be looking very clearly at the end, just as you'll be looking for mine, for specific recommendations of alternatives to your Common Sense Revolution from you, Mr Carr.

I say to Ms Bassett, with respect to your recommendation, I appreciate that you have had the work done with respect done to the last 10 years. I'd be interested in seeing those statistics, actually, relate to the last 20 years. I don't know why you would, other than perhaps some sort of political focus, take a look at only the last decade. I'd like to see a 20-year period included. I would also like to see some statistics included in there that look at the comparison of per capita expenditure by government over that period of time, because I think that that also relates to the issue of government debt. That would be a useful addition to the list of statistics that you've put in.

Mrs Marland: I was just doing a calculation here. I would like to say in response to Ms Lankin's comment about she'd like to see the figures for the last 20 years about where the debt is and what the figures were for the annual deficits, the thing that has astounded me the most about the last decade is a very simple figure, and that is that from 1867 to 1985, which is 118 years, this province's accumulated debt was \$25 billion.

I find that really a significant figure, that since Confederation it took us 118 years to have a \$25-billion debt, and that was the 1984-85 year when it was \$25 billion. You see here it was \$28 billion in 1985-86. But don't you think it's significant that it took us 118 years to get a \$25-billion debt in this province, yet it's only taken us 10 years to quadruple that?

I think it speaks volumes, frankly, about the kind of spending that took place from 1985 to 1990, when we had the highest revenues in this province and we were out of the recession of the early 1980s. This province was booming. Everyone will tell you that, regardless of political affiliation. Everyone in business and industry, the economists, the actuaries, will all tell you about the wonderful years between 1985 and 1990 in terms of the overall economy of this province. Yet in spite of that, the David Peterson government doubled the debt between 1985 and 1990.

Mr Phillips: That's outrageous.

Ms Castrilli: Have you seen your own figures, Margaret? Your own figures belie that.

Mrs Marland: The debt went from \$25 billion to \$48 billion. When the NDP took over, the debt was \$48 billion and now, five years later, five years after the NDP government, it's \$97 billion to \$98 billion. So I think if you want to look at the picture and the history, I would suggest to you that it's pretty astounding and it's pretty frightening when you do look at it.

If there's any question about any of this addition that Ms Bassett has moved to be included in the report, you will find all of those figures that she has just read are in the Finance minister's opening statement to this committee. The Finance minister's staff have not drafted those figures out of the air. There are reports that support all of those figures, and it is important that all of those figures be part of this report.

1010

Mr Phillips: I think it would be useful to follow up on Ms Lankin's comments. The last 20 years is fine with us, the last 15 years is fine with us, but I just think that it would be useful to put it into some perspective. I think when you actually look at the figures, it may surprise some of you.

I will just say that the deficit in the last five years of the Conservatives per year was way more than the deficit under the five years of the Liberals. The spending increases were much higher under the last five years of the Conservatives. The taxes per budget were much higher than under the five years of the Liberals, even when the gross domestic product was growing faster under the Conservatives than the Liberals. You took the deficit, debt, spending, all of those things up far faster. If Ms Bassett wants a little bit of the history in there, I think the last 15 years would be appropriate and that'll be useful.

I would just say one last thing. The last time a Conservative government balanced the budget was 1969.

I know you all are new--

Mr Spina: The Liberal government never did.

Mr Phillips: The last time a Conservative government did. You can see by your own figures here, the balanced budget in 1989-90, according to your own fiscal document, that's the only balanced budget in the last, I guess, now 25 years. I'm just saying it would be useful, I think, Ms Bassett--I know you'd like the historical perspective--to put at least the last 15 years in. I think that would be appropriate. I don't mind the last 20 years either.

Mr Tony Silipo (Dovercourt): I'm not sure whether to reflect more my frustration or my amusement at the way this debate has been going, because I quite frankly find it all pretty fruitless, and I'll tell you why. With all due respect to everyone around the table, we're using the drafting of this report to argue all of the same positions that we know we have. We're not going to convince each other of these fundamental differences.

What I think we should try to do in order to get on with this rather than waste each other's time is to try to reflect initially in this report the things that we heard, get away from this--Ms Bassett wants to put in the last couple of years because that makes Mike Harris's point very clear. We obviously want to see, if you're going to put those figures, it's more practical to put in the history over the last 10, 15 years, because that would give a truer picture.

We could argue about how much the debt has accrued over the last few years, but I think in fairness we'd have to also argue about what happened during the last big time when there was that big debt, as some deputants have told us, around what this country and this province did in the aftermath of the Second World War to get itself out of deficit and out of debt. I think it would be useful to have that put in there too. We could be arguing till the cows come home on that kind of back and forth and we wouldn't get anywhere.

My strong suggestion would be, let's just get on with trying to reflect in this report the things we heard, and then let's proceed, as I assume we will at the end of that, which is that the government members will have their recommendations and each of the two opposition parties will put their recommendations, and we'll have a report that we can then use in whichever way we think is useful out there and in the Legislature. That might make for a more productive session, or at least a faster session. I'm not sure productive would even be the correct word.

I offer that as a suggestion because I'm not sure what's going to come out of this otherwise. When we get on to the next couple of sections around the tax cuts, it's clear that whatever we think around the tax cuts, as is stated in the initial part of the draft that's before us, the expert witnesses as well as witnesses from business generally disagreed as to how stimulative the tax cut would be.

I don't think that's going to make any difference, quite frankly, to what the government's going to do. I think Mike Harris and the Conservative government is wedded to the tax cut and we're going to see a tax cut. It doesn't matter even if every witness had said, "Don't do a tax cut"; they're going to do the tax cut. So we could be wasting each other's time here today, Thursday, and whatever other days we have before we have to put this report in, and I'm not sure we'd be any further ahead.

So let's make sure that we agree that the words here reflect--as I think legislative research has tried to do--what was said to us, and then let's worry, perhaps more outside of this room than for the sake of Hansard in this room, about what we want to attach at the end of it as far as recommendations from the three caucuses.

The Chair: We have an addendum to Ms Bassett's motion. Further debate?

Ms Bassett: I would just like to reply to Mr Silipo. Thank you, I think what you say is valid, and in justification for what I wanted to add as an insert, I wanted to point out that the fiscal side had not been written about particularly. We've been stressing the economy on page 1, and the statistics that I drew were all stated in the minister's presentation to SCFEA. So in keeping with what Mr Silipo did say, this

was part of our presentation. So it's not going back in history, and maybe that's a good way to get on with things.

Mr Silipo: I have no problem if you want to put it that way, as long as you're also prepared to say that that reflects what the Minister of Finance said to us, and that the Minister of Finance also refused to give us information that we requested. If you want the truth, put the truth out there. We can find words that say it that aren't offensive to anybody, but let's not try to get half the truth in on one side and try to omit the other half of the truth on the other side. Because again, all that's going to do is we're going to be screaming at each other for the next couple of days. We can do that but I, quite frankly, would rather spend my time more productively.

The Chair: Further debate? There's an addendum to Ms Bassett's motion from Ms Lankin regarding expanding the time frame to 20 years.

Ms Lankin: I'll amend that to 15.

The Chair: Fifteen years. Is there agreement on the addendum to Ms Bassett's motion?

Ms Bassett: No.

The Chair: No? Do we need a vote on it?

Mr Phillips: Yes, a recorded vote.

Ayes

Castrilli, Grandmaître, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Carr, Ford, Hudak, Marland, Spina, Wettlaufer.

The Chair: The addendum is defeated.

All those in favour of Ms Bassett's--

Ms Lankin: No, excuse me, there was a second part to my recommendation, which was that statistics be included with respect to the per capita cost of delivery of public services.

The Chair: My apologies.

Mrs Marland: Mr Chair, you've received the motion: can we defer that motion till after lunch, until we have an opportunity to discuss it?

The Chair: With the committee's agreement? Deferred.

Are there any other additions to--

Mrs Marland: Maybe if we could have the motion in writing so we know what we are specifically dealing with.

The Chair: We'll attempt to have that pulled from Hansard.

Any other additions to page 1?

Ms Lankin: I had earlier raised a couple of points. I think Mr Spina had made a suggestion which was helpful. I don't know what's happened with that. In the first sentence we indicated that the overview of the economy and the assessment of perhaps the word "current" revenues and expenditures are on track,

so that it's very clear that we're talking about the 1995-96 numbers that were provided to us. In the second paragraph at the end where legislative research has indicated that revenue and expenditure projections for 1996 would not be provided until the budget, I wanted some reflection that medium- and long-term predictions of revenues and expenditures had not been placed before the committee; therefore our recommendations will be made with the absence of that information.

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The Chair: That was part of your original amendment, Ms Lankin, or is that a new amendment?

Ms Lankin: That was the first point that raised and we never did actually conclude dealing with that. We went on to Ms Bassett's amendment.

Mrs Marland: Is that being placed as an amendment, because that's your opinion that you're placing as an amendment, isn't it, that the information wasn't available?

Ms Lankin: I think it's more than my opinion. I think it's fact unless you have something provided to you that we haven't. It wasn't provided to the committee. I asked that a number of times, and you know that the answer was no.

The Chair: Are you going to move that as a motion, Ms Lankin?

Ms Lankin: If that's the only way to deal with this, if there isn't consent. I had asked for a sort of low-key, non-partisan words to reflect that. If there's a general agreement that that could be worked in, then--

Mrs Marland: Because we did receive three or four communications over a period of three or four days from the ministry giving further information, and it may not have been the information in your opinion that you had asked for, but we did receive further information.

Ms Lankin: Do you have medium- or long-term projections on revenue or expenditures? I didn't get that, and that's what I'm referring to. All I'm saying is that if we could, in a very quiet and low-key way, indicate and stress that the information that we're dealing with is the current information as is in paragraph 1 and with respect to the end of paragraph 2, that it's not just 1996, that medium and long term, maybe that's the way it could be done: "The Finance minister stated that revenue and expenditure projections for the medium and long term would not be provided until the budget." That would even meet the needs of what I'm suggesting at this point in time.

Ms Bassett: I think that Ms Lankin should write it out and then we could consider it, if you want to make a motion to that effect.

Ms Lankin: I'm going to make a motion at this point in time then. I'm going to move that in the first sentence in the third line, the word "predicted" be deleted and be replaced by "current 1995-96 revenues and expenditures" etc, and that in the last sentence of the second paragraph, in the second line of that sentence where it reads, "expenditure projections for 1996," that "1996" be deleted and be replaced by the words "medium and long term."

The Chair: Is the motion clear?

Mrs Marland: Yes, the motion is clear, but I don't accept it as--it can be a separate motion, but the statement as it stands, "The Minister of Finance stated that revenue and expenditure projections for 1996 would not be provided until the budget." That's what he said, so we can't change what he said. If Ms Lankin wants to add "or medium and long" that's different, but she can't take out "1996," if that's what he said.

The Chair: Ms Lankin has moved a motion.

Ms Lankin: I'm willing to work this through with Ms Marland. I did hear him say my words as well, so

why don't we put it all in? "The Minister of Finance stated that revenue and expenditure projections for 1996, the medium and the long term, would not be provided until the budget."

Mr Silipo: That's what he said.

The Chair: Ms Bassett, did you have a comment?

Ms Bassett: I think that this same argument that Ms Lankin is raising was raised in Hansard, if you want to go back and read the questions to the minister at the presentation on that day. I think that we have to go with what is written on the page here.

Ms Lankin: I don't understand your point. I asked him for medium- and long-term projections and he said it wouldn't be provided until the budget.

Ms Bassett: That's right.

Ms Lankin: That's an accurate reflection of what he said. According to Ms Marland--I don't remember this--he also said 1996 wouldn't be made public until the budget. I don't recall that. I remember medium and long term. But if Ms Marland's right--I know I'm also right--why do you only want one-half of it in there? The 1996 won't be provided until the budget, and the medium- and long-term won't be provided until the budget. Let's put all three aspects of that in the sentence.

Mrs Marland: Maybe we could ask Alison, because I'm assuming that when Alison drafted this sentence, she took it from Hansard. I have not reviewed the Hansard. Is that where you got that?

Ms Drummond: I'm happy to review the Hansard. I believe that indeed all three statements were made. There weren't projections for any--

Mrs Marland: I suggest that before we vote on it that we do review the Hansard, because it wouldn't be right to put something in here that's either a contradiction of what the minister said or our interpretation of what the minister said.

This sentence says, "the Minister of Finance stated," so I'm sorry, I have to see what the Minister of Finance stated in the Hansard before I can vote on this, frankly. And I respectfully suggest that if we're voting on amending a sentence that says "the Minister of Finance stated" we should all review what Hansard said and then we'll know what he said.

I think it's inappropriate for us to vote on that amendment until we've reviewed it and, unfortunately, I didn't bring the Hansard with me. Ms Lankin is certainly in order to move an amendment, but before I can vote on it, I need to see it. I'm suggesting that we table that until we can look at the Hansard.

Does anybody have the Hansard with them?

Mr Grandmaître: I think what Ms Lankin is saying, she's not trying to deny or to change what the minister has said or the ministry. I think what Ms Lankin is trying to do is to get more information, and that's what she's trying to do with this resolution, in order that we can resolve this or we can come to a fair conclusion.

Mrs Marland: With respect then, this is a report of the committee.

Mr Grandmaître: Yes, I realize this.

Mrs Marland: This sentence isn't Ms Lankin requesting anything. This is Ms Lankin reporting what the Minister of Finance stated, and Ms Lankin thinks that the Minister of Finance was before the committee and made this statement. All I'm saying is, she may be right, and we will know very quickly by referencing Hansard. If no one has Hansard in front of them this morning, we can't confirm what he said. Let's deal with it this afternoon and get on.

The Chair: We could have copies of Hansard for this afternoon.

Mrs Marland: Let's do that.

Mr Phillips: I think it would be useful, and it may be we're going to have to change the first paragraph at the top of the page, as is traditionally done in pre-budget hearings. Actually, what is traditionally done in pre-budget hearings is the Minister of Finance presents the medium-term fiscal outlook, and that didn't happen. So if we don't do it in the second paragraph, I think we have to go back and we have to almost take out the first few words, as are traditionally done in pre-budget hearings. We actually have the opposite of what is traditionally done.

Mr Chair, to be helpful to you, we can look at the Hansard, perhaps deal with it early this afternoon, but if it doesn't work in the second paragraph, I think we would want to go back up to the first paragraph and just point out that we didn't get what's traditionally done.

Ms Castrilli: Just a point of clarification: I think if the issue is that we don't want to change what the Minister of Finance said--I think that's self-evident; if that's what he said, we don't change it--but it does follow from what he said, in any event, that officials did not provide predictions for either these numbers or any medium- or long-term projections. So, with Ms Lankin's permission, we might look at amending that second half of that last sentence and make the point.

Ms Lankin: If that makes government committee members more comfortable and avoids having to defer the motion to this afternoon, I have no problem with that. It gets the intent across. All I wanted on the record was that the medium- and long-term numbers weren't before the committee. So that's fine.

Ms Bassett: I think that's accurate, as Ms Castrilli pointed out. We don't want to put words into his mouth. That way it makes it an accurate statement if you want it to be added.

1030

Ms Lankin: I will amend my motion to have those words added at the end of the sentence. It would be, "Officials therefore did not provide predictions for," I would say, "1996, medium or long term."

Ms Bassett: I would still feel more comfortable looking at the Hansard thing. Is there any problem waiting until we look at it?

Ms Lankin: It's just efficiency for us to move on. I mean, you know that officials did not give us the medium and long term. Is there a dispute about that?

Ms Bassett: I beg your pardon?

Ms Lankin: Is there any dispute about whether or not the officials provided us with the medium- and long-term projections on expenditure and revenues? I don't think there is a dispute about that. So we're not now changing anything that is related directly to what the minister said. It's just, "Therefore, officials did not provide predictions for 1996," which is what the minister said, "the medium or the long term." That will satisfy my concerns.

Mr Wettlaufer: Actually, I think the "officials therefore did not provide predictions for these numbers," would not be appropriate terminology, because we're talking about 1996 expenditures, not medium- and long-term expenditures. I think we would have to have a separate sentence: not a separate clause, but a separate sentence.

Ms Lankin: "Officials also didn't provide us...."

Mr Wettlaufer: I was just going to suggest, Ms Lankin, that, "Officials also did not provide predictions for medium or long term."

Ms Lankin: That makes me very happy. That's great to hear that. If you will agree, I will agree.

Mr Wettlaufer: For you.

The Chair: The Chair is unsure as to whether or not we are going to proceed with a vote on the amendment. Is that the wish of the committee, or are we going to table it until after lunch? Those seem to be the two things that are in front of me.

Ms Lankin: If we could try this one more time, I will agree with Mr Wettlaufer's construction of this. The word in the first sentence of the first paragraph, "predicted," is dropped and it is changed to "current," 1995-96, and an additional sentence is added to paragraph 2, which says, "Officials also did not provide the predictions for medium- and long-term expenditures and revenues."

The Chair: Is the amendment understood?

Ms Bassett: We need a lawyer here, because "current" and "predicted" mean totally different things.

Ms Lankin: That was Mr Spina's suggestion. I took Mr Spina's suggestion on that.

Mr Silipo: You could have "current" and "predicted" even. The two don't conflict. You could have both words in it.

The Chair: Is there further debate? Are we ready to call the vote?

Mr Wettlaufer: Can we split that? Can we split the amendment into two parts, one which could be deferred until we have a chance to review Hansard, and that would be the first paragraph, the "predicted," but the second part, being the second paragraph, we could vote on that?

Ms Lankin: Fine.

The Chair: Agreed? We will vote on the amendment to the second paragraph. Those in favour? Opposed? The motion carries.

Any other amendments or discussion on page 1?

Ms Bassett: We haven't voted on the--aren't we going to vote on the--

The Chair: I stand corrected, Ms Bassett.

Mrs Marland: Well, I'm sorry, I moved to table that sentence until we reviewed Hansard.

Ms Lankin: I withdrew that amendment and I placed an entirely different amendment.

Mrs Marland: Could I be told what the amendment is, then, please, that we're voting on?

The Chair: The amendment that we just voted on?

Mrs Marland: I'm talking about the new amendment referring to the last sentence.

Interjection: We just voted on it.

Mrs Marland: No, we just voted on the "current," didn't we?

Ms Lankin: No, that's been deferred till after lunch, Ms Marland. We just voted on a different amendment for the second paragraph. It is the addition of a new sentence at the very end, which reads, "Officials also did not provide predictions for medium- and long-term expenditure and revenue numbers."

Mrs Marland: Thank you.

Mr Grandmaître: Mr Chair, on a point of information: If we're so concerned about changing one or two words of this report, I think Ms Bassett did make two changes in the first paragraph. "This growth was led by exports, which increased at a 10%...." We made her change it to 9.8%. Is this answered, or was this brought in this morning? Also, "99,000 jobs," which was changed to "100,000 jobs": Was this answered, or was it changed this morning?

The Chair: Could I ask Miss Drummond if she could respond to that.

Ms Drummond: On the 99,000 and 100,000, officials on the day gave both numbers, and I actually wasn't certain which one was accurate, and I didn't have a chance to check with the officials.

Mr Grandmaître: So you gave both.

Ms Drummond: But both are on Hansard, yes.

Mr Grandmaître: How about the 9.8%?

Ms Drummond: The 9.8% is actually in the Ontario economic accounts from January 1996. I hadn't seen it. I didn't calculate the numbers myself, so it was off by the two tenths of a per cent.

Mr Grandmaître: Thank you.

The Chair: Now, we have Miss Bassett's original amendment, which is an addition of a paragraph at the end of "Economy," which she read into the record. Is there any further discussion on that?

Ms Lankin: Sorry, on what?

The Chair: On Ms Bassett's original amendment.

Ms Lankin: The big paragraph to be added?

The Chair: The big paragraph she wanted added in.

Ms Lankin: I understood that was being deferred until the amendment that I proposed which looked at per capita cost of delivery of public services, until the government members could discuss that, and Ms Marland asked for a deferral. So you can't deal with the main motion until you deal with the amendment.

The Chair: We'll defer that, and that will be deferred until after lunch?

Mrs Marland: Yes, please.

Ms Lankin: From what I understood, it was the request.

The Chair: I have no open motions on the floor at this point, other than those deferred. We will move on to further discussion on page 1. There being none, can we move to page 2? This is a minor victory. Are there amendments or discussions on page 2?

Ms Bassett: I would like to insert some explanatory material. If you look on the fourth line, after "as if it had been upgraded," we want to add, "In particular, the witness noted that the interest rate differential had narrowed between US dollar Ontario bonds and US treasury bonds reflecting the market's increased confidence in Ontario's current fiscal outlook. In other words, Ontario's debt now trades closer to an AA instead of previously at a low single A." I would like that to go in. I've got three, so I don't know whether you want them all to be read now, or do you want me to--

The Chair: Let's deal with one at a time, shall we?

Ms Bassett: All right.

The Chair: Comments on Ms Bassett's motion?

Mrs Marland: It's said in the February 15 Hansard, if you want to check.

The Chair: Ms Lankin?

Ms Lankin: No, I don't need to check. I remember what Ms Croft said very clearly. I'm just wondering, are we going to be going through and picking out--the prepared report that you have in front of you: Is this going to be just highlighting all of the sort of partisan positives, and what are you going to do with the people who came forward and were negative? Are we going to see deletions from this?

Ms Bassett: We're expecting you to put those words in.

Mr Silipo: Oh, no, that's your job too, Isabel.

Ms Lankin: Why don't you just do a minority report on your own? I mean, this is--

Ms Bassett: We've got a lot. You haven't had time, as you said when we sat down, to read the report.

Ms Lankin: Not in its entirety, but I've been reading ahead here.

Ms Bassett: If you read it through, you will see, if it favours any particular side, it represents many of the groups who would be social activists or whatever that are not in the fiscal side. They're very well represented, I feel. But since we happen to be talking at this particular point about the fiscal side and tax cuts and that, you don't see those groups particularly here. If you turn ahead a page, you do see the United Steelworkers in a big way. I think it has been balanced, thanks to Alison. So that's why we added that, just to flesh it out. It's an interesting comment. If people want to hear the whole story, sometimes one little bit isn't enough. You have to sort of explain what the whole picture is. So that explains that.

1040

The Chair: Further comment?

Ms Castrilli: I don't think Ms Lankin's point has been answered. The question was, given that the report now appears to be a summary of the witnesses who came before us, is it your position now to introduce a whole lot of information which would change the balance that we find in this report?

Ms Bassett: Can I answer that, having worked on it considerably? It is not aiming to change the balance; it is to make it be more explanatory, to flesh out. As you know, when you write anything, the first draft is very rough and you have to rejig things. There are things in this report where you talk about the Royal Bank in one part and come down somewhere else and we've put them up together if they're talking about the same point. That is the natural process of writing. This is what we're doing. When somebody raises a point, as the Bank of Nova Scotia person did, we are adding what the point was about. Sometimes it's not made clear enough, in our view.

Mr Carr: It's what they said.

Ms Bassett: And it's totally taken--as Mr Silipo said earlier today, "Let's use the material that was presented to this committee." This is all material that has been presented to this committee.

Ms Castrilli: I guess we'll see as we go through it if that's really the intent.

Ms Bassett: Yes, and, Ms Castrilli, as you understand, on the beginning part, the people who made the strongest statements on growth and uncertainty happen to be in the fiscal area: banks, Canada Trust. They're not going to be the social service agencies, which in the latter part of the report predominate by far. And maybe that's why. It's through no choice of ours.

Ms Castrilli: We'll see as this unfolds.

Ms Bassett: Okay.

The Chair: Shall we call the question? Are you ready for it? Those in favour of the amendment? Those opposed? The motion carries.

Ms Lankin: Although I don't have that in front of me, I would like to move an amendment which would follow on, because it deals with the witness from Canada Trust. It would be to find the appropriate wording--I don't have it written out--that would indicate that the witness from Canada Trust also admitted, however, that markets do not take into account the quality of delivery of health care services or education in the classroom or neighbourhood safety.

Mrs Marland: I'm at a real disadvantage, and I think we all are, that we do not have the Hansard in front of us. I think it's terribly important, if we are quoting witnesses who were before us, that we can all see that--I'm not questioning, Frances, whether they said that.

Ms Lankin: Or whether they said what Isabel said.

Mrs Marland: That's right. I think it's terribly important for us to have the Hansard so we can see--if we're going to add something to what Canada Trust said, I'd like to see what they said.

Ms Bassett: That's a good point if you want to put it in, but the fact is maybe the placement doesn't go there, Ms Lankin, because we're talking about growth in that particular part.

Ms Lankin: No, we're talking about what Canada Trust said and markets and the way international markets were treating Ontario's debt and the considerations, which you've expanded on, what the considerations were. My question to her in terms of the markets was about do they look at these other things, and she admitted in fact they don't. So it does get in there.

Ms Bassett: It kind of flows on.

Mrs Marland: But there is a section further on in the report on other issues, and maybe those two areas that you're referring to--in fact there is one that it deals with employer health tax. But if you're relating it to health issues, maybe that's where it should go and still quote Canada Trust. There were two things you mentioned, Frances, that she had said.

Ms Lankin: Health, education and community safety. I'd like to see the Hansard too, but I believe those were the three areas that I raised with her. I know health and education were for sure.

Mrs Marland: There's a section on colleges and universities, and there is a section on schools, so maybe it's there that you want to put her quote. There's a section on hospitals.

Ms Bassett: Why don't we get the quote and deal with it first thing after lunch?

Mrs Marland: There's a section on health.

The Chair: Are you suggesting that we defer the motion until we can check Hansard? This is the motion that was made by Ms Lankin.

Mrs Marland: There's a section on community services on page 36 as well.

Ms Bassett: I think we have to defer it. We can't put it in until we've seen it.

Mr Silipo: We're putting yours in without seeing it.

Ms Bassett: I can send this over to you. I've got something.

Ms Castrilli: That's not Hansard.

Mr Silipo: On a point of order, Mr Chair: I think it's important again, because this is the beginning of this process, that there is a sense of trust that we all are indeed honourable members and that when we say something was said we're not lying, that we actually believe that was said. I have no problem in believing Ms Bassett when she said she wanted to put in something else that the witness said. I don't see why there should be any problem in believing Ms Lankin when she says this witness also said the following.

If we need to get the words 100% correct--that I think we all agree with--that's what we have legislative research for. I'm assuming that as we go through all of this, if we are in fact working on the assumption that what we want to have in this report is to reflect what was said to us, as legislative research goes back and does the wordsmithing, they would also doublecheck and make sure that what we are putting in as additions reflects what was in Hansard.

We can do that or we can have everybody come here looking at Hansard, have 15 members of the committee going through Hansard. I think it would be more useful to let staff do their job, but it has to be based on the assumption that when we say we think something was said, we believe each other, that that was the case.

Mrs Marland: I'm not questioning Ms Lankin's recollection in this case. I'm just saying that frankly, I don't know how many deputations we had, but I cannot recall what each deputation specifically said. It's not that I don't believe Frances. I'm just saying that you're asking me to vote on an amendment that Frances is making, and the same thing with ours.

Ms Bassett: It's not the same with ours, because we have typed it out.

Mrs Marland: Just a second. I was just going to say that with ours we have given you the date of the Hansard quote. Maybe we have to recess until we get the Hansards, but the point is, I'm not going to vote against Frances's motion if it's what Canada Trust said, and I don't expect the opposition to vote against our inserts and revisions to this draft report if it's what was said. We'd look pretty foolish just voting back and forth without knowing that's what the Bank of Nova Scotia said or that's what Royal Trust said.

It's not like we're all here and we've all been off for two weeks since we dealt with this. We've all been on the road with another issue before this committee. That's the reason we're all sitting here this morning without a copy of Hansard in front of us. It's not our fault that we're here without that tool, but to tell you the truth, we should have the tool if we're making the amendments based on what somebody said.

We can make amendments based on our interpretation, if that's the way we want to word the amendment. I'm simply saying let's do it professionally, and the way we can do it is to be able to say--this is what Frances was doing, actually. She was making an addition to what Royal Trust said. It may be that she's absolutely right, so I'm going to vote in favour of that motion if that's what they said, but I don't want to do it in the absence of having Hansard in front of me.

I guess we're all pretty sloppy because we're here without the Hansard, to tell you the truth. I'm sympathetic to the fact that Frances at the beginning said very honestly and openly she hadn't been able to read this report. She just got it this morning. She's been on the road for two weeks as well. So we're at a bit of a disadvantage, I think.

Ms Bassett: Well, I don't think--

The Chair: Excuse me, Ms Castrilli was next on the list.

1050

Ms Castrilli: It strikes me that there are 41 pages. We spent an hour and a half on the first one, and with the limited time at hand, we're not going to get through this report. Could I be of some assistance and

say to you, Chair, that in order to save time we subject any of these amendments to looking them up in Hansard. In other words, we could preface virtually every amendment subject to being confirmed by Hansard so that we don't have to get into these kinds of discussions over every single amendment. We all want to be accurate. I think we all trust each other. I took copious notes. I could probably find Canada Trust in my notes fairly quickly, but it's not the same as having Hansard. Alison is here to help us with that. Let's just agree that any of the suggestions we make, any amendments we make here are subject to be confirmed in Hansard, and move on. Otherwise, we will not finish this report.

Ms Bassett: I would agree with that to a degree. I certainly agree with what Ms Lankin says, and I would have put it in if she could read it out and I would know. I think it's difficult to say you're going to agree with something if you have a vague idea without it being read out word for word. That's the only reason I was hesitant at the beginning. But anything that could be read out I have no trouble with.

Ms Castrilli: I don't disagree. I just think it's going to take too long if we're going to quibble about every single amendment that we make. I think we should simply agree that we're going to check out the specifics of each witness.

Mrs Marland: And then come back to it.

Mr Carr: I'll make a quick suggestion. My only problem with that is that Alison will spend probably all night doing this, looking up in Hansard. If we're content in knowing that some of the groups were opposed to the government's position and some were supportive through the report as it is, as Alison has tried to reflect it, if we can agree and go through that fairly quickly, maybe where we can spend the time debating and disagreeing is over the recommendations. Recommendations, I think, will be where there are contentious issues about whether we should do the tax cuts or not.

To get through this and to write the first part, my suggestion would be that we wouldn't have too many inserts other than what Alison has reflected, other than if there are some changes of a 10% to 9.8%, if it was factually wrong, through no fault of Alison's. If we could go through that part quickly, and this is getting along with what Tony said, then we can get the front part done. Then when it comes to the recommendations we can spend the time debating, "Should we go with the tax cut, shouldn't we?" and so.

Just for those who weren't here last year, that's what we did in the past. The front part reflected criticism of the government, it reflected support of the government, give or take, whether it was 50% or whatever. Let's get that part behind us and then, when we get to the recommendations, we can say the arguments. If we do that, then we will at least have the front part done, and at the end of the two days we can probably agree to disagree on the recommendations and then do our own minority report.

The way we're going, we won't even get a summary of what happened. I think that would be wrong, because then the presenters will have come in and we wrangled and didn't even get a pretty good consensus. I trust the researcher in a balanced way and in a non-partisan way to reflect what came forward in the 38 pages that she has here.

If we could go through it and not make major amendments, for want of a better word, both from the government and opposition side to score political points on--we'll save that for our recommendations--then we can get the first part of the report written, which is what the public said, give or take, some good, some bad against the government, and then get down to the real specifics, which this whole committee is all about: the committee's recommendations to the government. Then we can wrangle and go back and forth on each point. Would that be helpful at all?

Ms Lankin: I think that's extremely helpful. If I could just have your attention for a second, my last suggested amendment is directly in response to Ms Bassett's suggested amendment. I think your approach makes sense. I actually trust that, as I had a chance in going through this and scanning through it quickly, there is a fair reflection of all sides that were presented and I don't think that it is necessary for us to quibble over it.

But I suggest to you that if you're going to make all of these amendments, suggest amendments for

insertions, as Mr Carr said, which I think are designed to score political points, then I will be--I've got Hansard on its way down here right now--flipping through and I will be moving amendments to do the exact opposite. We will have a whole series of motions that we'll have to deal with, all of which the government will take one position on and the opposition will take another, and there will be a political story to be told about how you would put in your own quotes from witnesses but not the other quotes and it becomes a political document. I agree with Mr Carr's suggestion. I think the real meat of discussion should be around the recommendations and not around the reflection of the presentations that have been put before the committee.

Mr Carr: If I might just add, and I'll lay everything on the table, the opposition side, in justification of their recommendations, can then quote selectively from people and we can quote on what we've heard from people based on our recommendations. But in the past, in the last three reports the beginning portion was a reflection of what the public said. It was non-partisan because it was the best reflection of the researcher who did it. I think if we do that, then we can spend the time and move forward.

Having said that, as we go through the report, if there is the odd mistake that has been caught by people--I mentioned that 10% and 9.8%--we could speed this up and go through. Let's debate that rather than having all of what Hansard has said, because I can tell you if we start going back and looking at Hansard, our researcher literally won't get the report done because she will be spending all night going back, looking up. That wouldn't be fair to Alison, I don't think.

The Chair: Should we proceed through the report, then, on those--what should we call them, technical amendments?--non-technical amendments, I suppose.

Ms Bassett: What does that mean, then?

The Chair: Non-argumentative, I think.

Ms Bassett: I know that and I agree with the tone of where we're going and with what Mr Silipo said at the beginning. But I feel strongly that we come back to the beginning, when we look at the fiscal side, and we don't have any of those facts. That's why I moved that they were there. I think there are some cases where we don't have the facts that we need. I just wonder if that means we're not going to have any of these and we're going to go with the report as is.

The Chair: For the committee's information, we have a copy of Instant Hansard with us that Alison can thumb through.

Mrs Marland: It is important, and I think the opposition recognizes--I know the opposition recognizes--it's important that the report reflects what the deputations brought to this committee. The amendments that we have moved so far simply are reflecting what is in Hansard. I agree with Mr Carr that probably the greatest debate will be on the recommendations, and it should be. However, I'm not happy to leave the preamble of the report without the corrections that we needed. If you want to move to the recommendations and discuss them first, we can do it. But it doesn't mean that the changes we would like in the preamble are not dealt with. If you want to deal with those on Thursday and make your counterrecommendations, amendments to our amendments, then we'll have to do it. But there's a lot of work to be done.

Ms Bassett: This is a suggestion, and I'm new. It seems that, what everybody has been saying about the arguments and that which we'll be getting into, in order to have a productive meeting, if we were to start with the recommendations, if you think that's feasible, and then if everybody who had inserts or addenda tabled them and we sent them to the members of the committee so you could look at them and they wouldn't hit you and we could look at yours, we would see where they were going to go. It's much more meaningful to the committee members, not just to be given something. I understand that.

1100

I have several additional points that I think should be brought in. I'd like you to see them at least. I know it takes a lot of time to get through, but I would be happy to give them to you, and then if you wanted to

turn them down after we'd done the recommendations. In talking around, and the people who have been here longer would know of course, sometimes committees don't get very far through the report because they end up arguing all along, so maybe we should start with recommendations.

Mr Carr: Just for the new members, and it's getting off a little bit what Isabel said, but so everybody knows, page 33 of the last report will give you an indication of what has happened in the past as a specific example.

Page 33 of last year's report, which we got through and then we haggled over the recommendations and went our own way in the dissenting report, said, "The issue of long-term care can lead to discussions about a continuum of care." They talked about Bill 173 "was supported by some for the continuum of care it will provide. On the other hand, critics described it as a dismantling...", and it goes on and criticizes it.

What the reflection was in the report of what we heard from the people, and I remember this clearly, was that some people were supportive of it, and the report said it was supported by some, then also said it was criticized by some, which it was. That's an accurate reflection of what happened when people came in.

If we write the report saying that, and there may be some people and I'm sure there were plenty that came in and said, "We disagree with the tax cut," when we get to that portion we could say some people were opposed to the tax cut and some people were supportive. That would be an accurate reflection. Then in the recommendations, as each of the groups go through, and I'll throw this out, the NDP may say, "We're not going to go with the tax cut because XXX said this," and we will say we're going forward because of XXX, but in the report--what has happened in the past is what happened on page 33--each issue was accurately reflected, that some people supported and some were against.

Otherwise what will happen, and I think we're heading this way, is we won't have any report on what happened from the people that came forward, and all we will do then is go into minority reports. This should be non-confrontational of what we heard, and we can expand it further where we need to justify what we're doing, and the opposition can expand it.

If we go that route, we will at least have a report, and I will say this, that it didn't help the Minister of Finance last year when it said some people came in and supported, some were against, but that was an accurate reflection of what we heard. It is critical of the government and it's supportive of the government, and I think if you took in balance everything we heard, there were some people supportive and some people critical. That would just be my suggestion. It's page 33 of last year's report, Ms Marland reminds me.

The Chair: Further comment? Is the proposal that we move to the recommendations?

Ms Lankin: No.

Mr Carr: That was before me speaking. That's what Isabel said.

The Chair: The proposal is that we continue through the report.

Ms Lankin: I agree with Mr Carr's approach.

The Chair: Further discussion on page 2?

Mrs Marland: You are in a position on page 2 where Frances has moved an addition as to what Canada Trust said, and I suggested that we wait for Hansard. I would move that we table her amendment until we have Hansard. I may be in favour of it.

The Chair: All agreed we table Ms Lankin's motion until we have a copy of Hansard available? We do have a copy of Hansard here. Is it appropriate to proceed with that?

Mrs Marland: No, I think what we need is to have all of us with our copies this afternoon. It would be faster and it's better than having it read to us.

The Chair: Then we will defer, with agreement. Is there any dissent? No.

There's also a motion from Ms Bassett on the table regarding the fourth line of the first paragraph. Does that meet the same qualifications? It's her reference to the AA credit rating. That will also be tabled until we have Hansard.

Ms Lankin: Mr Chair, just on a point of order: I think technically you already took the vote on Ms Bassett's amendment. I am in agreement with you that in fact it should be treated the same as mine and Hansard should be checked, but technically you already took a vote on it, so I think you need the committee's agreement to void that vote and revisit it this afternoon.

The Chair: Agreement? Thank you. Any other comments on page 2?

Mrs Marland: Have we done the quote for the Bank of Nova Scotia on page 2? No, we haven't. Halfway down the paragraph--actually Isabel has her report highlighted and we're going to use the reference: "The Bank of Nova Scotia made a more general comment about market confidence."

Ms Bassett: Are we going to proceed?

Mrs Marland: Yes, we are, for the time being. What we're doing is, if it refers to Hansard, we're just tabling it until we all have a copy of Hansard.

Ms Bassett: Okay. This is the second insert then. We've already done the first insert.

The Chair: Yes, it has been tabled until we check Hansard.

Ms Bassett: The second one--and I'm happy to circulate these to you after lunch; I'll get them all Xeroxed and show you: "The Bank of Nova Scotia made a more general comment about market confidence," and then I want to add, "In particular, the bank's submission noted that Ontarians are already experiencing part of the payoff from the retrenchment of the public sector. Interest rates are trending lower, so yields are still very high relative to the underlying improvement in inflation." That's page 6 of the Bank of Nova Scotia presentation.

Mrs Marland: Do you want to table that?

The Chair: With the committee's agreement, we will table that comment.

Mr Silipo: Mr Chair, I'm finding this just a tad confusing. I think we're getting, with all due respect, different approaches coming from the government side. I thought, from the basis of the last discussion and the suggestion Mr Carr had made, we were going to try in effect to have in this first part of the report just a pretty straightforward rendition of what was said to us, rather than trying to sort of pad the report along with quotes that might on the one hand, more support the government's view or on the other, more support the view of the opposition parties.

What I'm seeing from Ms Bassett is a different approach in terms of putting more references in here, the veracity of which I don't doubt, but I think it's a question, do we want to go through and take out from each presentation those things that tend to make the point that the government wants to make or do we want to just try to give a pretty straightforward, overall summation of what was said and then deal with the nuts and bolts later on in the recommendations? I just think that, yes, we can table all of these, but we haven't resolved the basic problem.

The Chair: With the tabling of them, there will be written copies coming along?

Ms Bassett: Yes. I understand what you're saying. I had to go out to see if I could get them Xeroxed for you, and then I guess you voted not to have them. I'm happy to give you all these things, which we feel

add coherence and balance to the presentation. We're happy to look at anything that you have that you want to put in, and then we could move forward the way Mr Carr has suggested, which I would be happy to do. But I feel that the report would be very thin indeed if it didn't have these additions to it, as I'm sure you will and Frances will when she has time to read it and think of some of the good things that she wants particularly to add.

Mrs Marland: The point is, it's only a draft. That's why we're working on it.

Mr Silipo: I'm not arguing with that. Speaking only for myself, I would certainly be inclined to resist the temptation to try to pad the report, if I can use that common phrase. I think that has to apply all around if we want to get through this in the two days we have allotted to the committee. But if Ms Bassett wants to simply tell us what those are and then we'll just table them one by one, that's fine. The other would be to just simply go through, deal with the technical changes that we have in here, and Ms Bassett could simply give us a copy of those amendments that she has for us to look at this afternoon and we can deal with them then.

Mr Wettlaufer: With all due respect, Mr Silipo, I don't believe that what we're proposing here is to pad anything. It's a matter of clarification. Whether it be business or a university paper or anything else, you do want to have as much clarification as possible. Of course I'm not as experienced in this political arena as you are. Nevertheless, I don't believe that we should hearken back to past political experience necessarily, we should just get on with the job and do it properly. If that means full clarification, then why not do it?

Ms Castrilli: I would prefer a process that would be as simple as possible, and this process doesn't appear to be. It would be very helpful if Ms Bassett were to distribute her comments and we could look at them. I think to do it this way is just a hopeless exercise, particularly with the Bank of Nova Scotia. If you look through that report, you will see that we might want some things in there that say the opposite or at least give a fuller picture.

Ms Bassett: You will.

Mrs Marland: And that's fair.

Mr Wettlaufer: That's what we're saying.

Ms Castrilli: Precisely. Whether that's padding or not, I'll leave to someone else to decide. But to deal with these things in the abstract, with you reading them out to us and us trying to anticipate what our response might be and what we should be adding, is just a fruitless exercise. I suggest that we receive those comments first before we proceed much further.

Ms Bassett: I agree.

The Chair: Ms Bassett, would you be prepared to table your comments in a document?

Ms Bassett: I would be prepared to table them as soon as lunch break is over, or I could get them even sooner. I know what Ms Castrilli is saying. You can't just get a whole bunch of comments; you need time to look at them. So everybody will have them after lunch.

Mrs Marland: Could I suggest that we just take five minutes.

Ms Castrilli: Could I move that we adjourn, Mr Chair.

Ms Bassett: I was going to suggest that.

Ms Lankin: I was going to suggest that if Ms Bassett can have copies of her intended amendments produced, we receive those and adjourn and come back at 2 o'clock. We would be in a position to move through them a much more orderly fashion with any suggested responses that we want to make prepared at that point in time as well.

Ms Bassett: I think that's a great suggestion.

The Chair: Is there agreement?

Mrs Marland: So we'll agree to get them to your critics' offices and you can distribute them.

The Chair: Would you circulate one to the clerk as well, please.

Ms Bassett: And to Alison, the key person in this.

The Chair: The committee will stand in recess until 2 o'clock.

The committee recessed from 1112 to 1400.

The Chair: I call the meeting to order. I would remind the committee that we have two days scheduled for the writing of this report. It would be nice if we could deal with the major issues and not get tied down too much on the details. The legislative researcher and writer will take her best shot at rewriting the report and highlighting those changes. We will then be able to go over those changes again on Thursday, I believe. Perhaps we'll take another stab at it. I believe we were on page 2, having passed over page 1. There were three motions, I believe, which were deferred until after lunch. Are we ready to look at those issues, or shall we continue on?

Mrs Marland: From page 1, we had deferred the addition of a whole list of items. Do you all have a copy of our--

Ms Castrilli: We do.

Mrs Marland: Okay. So that whole "In the past 10 years" all the way down to "Ontario's public debt interest." There are six items to be added to page 1.

The Chair: Do you have a copy for the clerk?

Mrs Marland: I'm sorry, we didn't give you a copy? Here's one.

The Chair: This handout deals with the amendment on page 1 that was moved by Ms Bassett. Discussion?

Mr Silipo: I'm sorry, Mr Chairman, where are we?

The Chair: I'm afraid we've slipped back to page 1. It is the long addition at the end of "Economy" and just prior to "Expert Witnesses and Economists."

Mr Silipo: So the government members intend to place the amendments we've got in front of us?

The Chair: That's my understanding, yes.

Mr Silipo: I just ask because I've heard at least three different versions since we recessed at 11 o'clock. That's the current position, is it?

The Chair: That's my understanding, Mr Silipo. I'm proceeding to conduct the meeting on that basis.

Mr Silipo: I hadn't seen these until I walked back into the committee room.

The Chair: I understand they weren't available until just now.

Ms Bassett: If I can explain, what happened was that we decided, really following your suggestion, that we would pare down as much as we could, and we started working away to pare down our suggestions

for changes, and it seemed to take up the time. As we were doing that, we got the idea that we would ask you if you were interested in forming a committee that could look at these really just technical suggestions with Alison, a non-political committee, and meet this afternoon instead and put them in, and then we would start with a clean draft. But I understand from Mr Phillips and Annamarie Castrilli that they're going to be at a conference tomorrow and the next day and they don't have the staff to do it today. And Ms Lankin, I tried to get you but--

Ms Lankin: You were unable to.

Ms Bassett: Yes, but I did explain to your LA.

Ms Lankin: I got the message. Thank you.

Mr Spina: You were in your office, though, weren't you?

Ms Lankin: No, I wasn't. I had a luncheon meeting and I went to my luncheon meeting.

Mr Spina: Because last time we said we couldn't get you, you were in your office.

Ms Lankin: That's right, I was in my office last time. Sorry.

Ms Bassett: I can understand the Liberal point of view, and I don't know what Ms Lankin's and Mr Silipo's is. But it's not going forward anyway if the Liberals don't have the staff or the time because of their conference tomorrow.

Ms Lankin: The suggestion would have been that this afternoon we meet in a subcommittee to try and work through adding some of these things to the report?

Ms Bassett: We thought that one of the ways to make things move forward on these basic changes in the draft to a draft 2, moving stuff around in the report a little bit, which some of our suggestions are, was that Alison, with a representative of each of the parties, non-political, could sit and do them. We're not hiding what we're asking to do, just as you wouldn't with what you're trying to do. It's a matter of putting them on paper, that's all. I thought it would facilitate the procedure and then we could start on what the real wrangling probably will be, philosophically will be, when we get to the recommendations.

Ms Lankin: We would be in agreement with that approach, but if it can't be accommodated, we can do it here in this room.

Ms Castrilli: We agree with the approach. Our problem is one of timing. We just can't do it.

Ms Lankin: This afternoon? Does it have to be non-political? You're saying having staff here with Alison. It could be one of the committee members from--

Ms Bassett: Yes, it could, but I don't think that was the problem with Mr Phillips. I think he wanted legislative staff who could be looking up certain things he wanted to put in and he felt he didn't have them available, and then tomorrow he wouldn't be able to do it because he wouldn't be there. I said he could do it tomorrow. It is short notice, I certainly understand. It just came to me with the morning's developments.

Ms Castrilli: We're simply not available for the next day and a half. That's the problem.

Mr Spina: Aren't we supposed to be drafting this report at a later date? In other words, that's not going to happen this Thursday. You mentioned, Mr Chair, that there are a couple of days set aside to actually do the report?

The Chair: Today is set aside to do the report and Thursday is set aside to do the report.

Mr Spina: There's no other date beyond that?

The Chair: Not currently scheduled.

Mr Spina: To accommodate Ms Bassett's suggestion and also because the Liberals are tied up for the next two days, would it be reasonable to suggest--do we have another day so we could defer Thursday? If the subcommittee met on Thursday and the committee met as a whole to do the draft at a later date, is that possible?

The Chair: My understanding is that that has to be decided by the House leaders if we were to have an extra day.

Mr Spina: That can't be done by this committee?

Ms Lankin: The House leaders would rarely deny a request from a committee for an extra day. This is not a legislative bill.

The Chair: I suppose it becomes a timing issue for the government.

Ms Bassett: It's just that everyone's so busy, it makes it difficult to--

The Chair: May I suggest that we press on with our process and see how far we get today.

Ms Castrilli: What is the process we're going to be following?

The Chair: We have a proposed amendment in front of us now dealing with page 1. I suggest we review that proposal and, all willing, we could insert it into the report. We could then move to the motion on the fourth line of page 2 that Ms Bassett moved this morning. Then there's a third motion on the Canada Trust comments in paragraph 2 of page 2. I believe, at the conclusion of that, Ms Bassett had another amendment--which we haven't been presented with yet, but she said she had three on page 2 at one point in time this morning--and we could move to that. Is that a start?

Ms Bassett: Yes.

1410

The Chair: Is there any discussion on the proposed amendment you have in front of you on page 1? Let's refer to this as amendment number 1 for clarity.

Ms Lankin: I'm still trying to relate this to this morning's process. We all recognize that we're now dealing with it in writing, which we weren't before, but if you recall, I had requested, in addition to the statistics here, the information with respect to per capita cost of public service delivery. My apologies in that I can't remember where that information was presented to us as a committee, but I know that during the course of the introductory comments from the Finance minister and/or the parties, that information was put forward. I think that also is an additional and useful benchmark with respect to fiscal indicators that you're trying to highlight in this section.

Mrs Marland: Can we agree that when the quote you're looking for is located in Hansard, if you're asking to have it added, our research officer just add it at the end of this list of six sentences we're asking to have added. Is that okay, Frances?

Ms Lankin: I guess it is. I'll have to go through and find out whether it is explicitly stated in Hansard or whether it was on written materials that were provided. I don't know which. I'll have to do some work to try and find that.

Ms Drummond: It is on Hansard. I'm afraid I have the draft Hansard, so I don't have a good page reference; 1115-1 is what I have.

Ms Lankin: What day?

Ms Drummond: On the 5th; the minister's presentation. It's about the third or fourth page of his presentation. I don't know if this is the paragraph you were looking for, but he said:

"While Ontario had the third-lowest per capita provincial spending in 1993-94, consolidated provincial-local spending in Ontario for 1993-94 was \$6,753, the second-highest of all provinces, exceeded only by Alberta."

Ms Lankin: I think that's what gave rise to my question for a comparative table on consolidated debt as well, because we only had a provincial debt comparison, not consolidated municipal-provincial. It is the individual per capita spending of the provincial government statistics, given that all the rest of this is fiscal information related to the province, that I would like to see included in there. In terms of the way in which this information is going to be included, will it make reference to the fact that this was part of the minister's presentation?

Ms Bassett: It should.

Ms Lankin: Okay.

The Chair: All in favour of the proposed amendment? It carries.

The second motion is at the top of page 2 of Ms Bassett's handout, lettered A. The reference is to the AA credit rating, I believe it was--a motion by Ms Bassett.

Ms Bassett: Do you want me to explain, Mr Chair?

The Chair: Please.

Ms Bassett: If you look at page 2 of the draft report, at the end of the third line it says, "Ontario debt as if it had been upgraded," and then you add there, "in particular..." the addendum you see in front of you. It's a follow-on.

The Chair: Comments? In favour of the amendment? Carried.

Ms Lankin: Mr Chair, I have an additional amendment which I had proposed this morning that would follow on that. I'm sorry, I don't have it in writing, but it would read: "The witness, however, did admit that markets are not concerned about which programs are being cut and what the social costs of those cuts are."

The Chair: That is an additional sentence to that paragraph?

Ms Lankin: Right. If I may give the Hansard reference, it's from the Hansard of Thursday, 15 February, page F-346. In response to a question I put to Ms Croft, she said: "You're absolutely right. My perspective is vastly different than the political arena would be. A lot of what I do is talk to people who actually own the credit," and this is the relevant part, "and when you're sitting in Tokyo, London, New York, you're not concerned about which programs are being cut and what are the social costs, which is obviously something we can't ignore, but don't play a big role in the market realities."

Ms Bassett: How far do you want the quote to go? Picking up at, "The witness admitted markets are not concerned" would be the end?

Ms Lankin: I think I suggested that it would read something to the effect, and would leave it to Alison to write: "The witness also, however, admitted that markets are not concerned about which programs are being cut and what the social costs of those cuts are."

Ms Bassett: And that's it, then. Okay.

Ms Lankin: It just gives the flavour of it.

The Chair: All in favour of the amendment? Carried. I'm referring to that as amendment number 3. Amendment number 4 is listed as B on page 2, beginning with "the Bank of Nova Scotia." Ms Bassett--I hesitate to call on you, Ms Bassett. Your voice seems to be fading.

Ms Bassett: I know. Wayne could go ahead.

The Chair: Under B, the Bank of Nova Scotia, comments? Whereabouts is that inserted, Mr Wettlaufer?

Mr Wettlaufer: Where it says, "The Bank of Nova Scotia made a more general comment about market confidence," and before the next clause, "both witnesses," we insert: "In particular, the bank's submission noted that the Ontarians are already experiencing part of the payoff from the retrenchment in the public sector. Interest rates are trending lower, though yields are still very high relative to the underlying improvement in inflation." That was taken from page 6 of the bank's presentation.

The Chair: Comments? In favour of the amendment? Carried.

1420

I'm referring to that as number 4. C will be number 5, and it also is on page 2. Comments?

Mr Wettlaufer: At the end of that first paragraph, which is, "and consumer confidence is low," we insert: "The witness noted that real per capita income in Canada is actually \$155 lower today than it was when the recovery began in 1991. The witness stated that part of the reason was that job growth has been sluggish due to public and private sector restructuring and part because of higher taxes given that Ontario is a high-tax jurisdiction in North America."

That's taken from the February 15 Hansard.

Ms Lankin: I have a bit of a problem with that. It's not that I dispute that Ms Croft made that assertion, but if you will recall, there were a number of occasions--and I can't remember specifically if I did it with Ms Croft--when I explored this issue of competitiveness and taxation levels with a number of the presenters. In fact, in terms of the material produced by the Ministry of Finance, which I circulated, it showed that on corporate tax, on combined corporate-property-employer-payroll taxes we are quite competitive, and with respect to personal income tax, while we are higher than many other jurisdictions at the high end marginal, we're actually lower at the low-income end.

There is some real dispute about that kind of information, and if you would like to include that reference to the high-tax jurisdiction, I think it would be appropriate to include all the other information and those who agreed, when questioned, that in fact we have actually a competitive tax situation in a number of circumstances. I'd be happier if you want to make the point about the lower real per capita income; I think that's reasonable. And whether or not we have to refer to the reason this witness spoke to with respect to slow job growth--we could just delete that second sentence in that insertion.

Mr Wettlaufer: Keep in mind, Ms Lankin, that the witness did not say it was the highest-taxed jurisdiction or anything like that. What she said was that "Ontario is a high-tax jurisdiction." There are many areas in North America which do have smaller taxes, albeit there are others that have higher taxes. She was just saying it is a high-tax jurisdiction.

Ms Lankin: I take your point in terms of the true meaning of the words. In the context of the report, the sense it gives is that it feeds into what I really believe is a misconception out there that is promoted by some people with respect to issues around tax competitiveness. I'd just like us to try and get some of the real facts on the record. I don't dispute that if we can improve our tax competitiveness, if there's room to do that--and that may be where we have a dispute--that's a useful thing to do. But in this context I'd like the report to reflect the varying opinions around that. I don't know if that is really critical to you in that paragraph.

I think the point you make about the per capita income is a useful addition to the paragraph. Maybe we could just drop the second sentence, because otherwise it means we'll have to be looking for the references in the Hansards for all the other comments that came forward and build them in as a counterpoint.

Mr Wettlaufer: It's just that it's generally accepted by business in Ontario today that we are a high-tax jurisdiction. In fact, I know of several businesses in my own riding that have considered leaving the province because of the tax situation relative to some of the low-tax jurisdictions in the United States.

Ms Lankin: It's not only generally accepted by business; it's generally promoted by business that we are a high-tax jurisdiction and/or not competitive in our taxation. When you listen to the CFIB and the CMA and some of the other organized lobby/special-interest voices of the broader business community, that's the position they will often put forward. What I'm saying is that on the real data and information provided by the Ministry of Finance for during your government's term in office, we can see that the perception is more perception than reality. I think it's useful for us to start to debunk that, as we are trying to promote Ontario as a place to invest.

I am aware of a number of companies that have explored other jurisdictions which they saw as perhaps being more favourable in terms of tax--I'm thinking of the southern US states now--and very quickly found out that in terms of additional costs for employee health benefits and other things not covered through the taxation rolls and/or social infrastructure costs and/or the reliability of the workforce, they found there were tradeoffs there that in the end they were unwilling to make, and they did not relocate as a result.

It's perhaps not worth us arguing back and forward over it. In minority reports, if we want to stress this point, we can put our own perceptions forward, but I think it serves all of us well, in terms of promoting Ontario as a place to invest, to start to get the real facts out about the fact that with respect to other industrialized states, particularly the Great Lakes states and many other provincial jurisdictions, we are very tax-competitive.

Mr Wettlaufer: I will give you that we are competitive, but I'm going to over this again. I don't see anything wrong with what it says. It says, "part of the reason was that job growth has been sluggish due to public and private sector restructuring and part because of higher taxes given that Ontario is a high-tax jurisdiction in North America." All that is is a statement of fact. I'm not saying we're not competitive with other areas or some areas of North America, but it is a high-tax jurisdiction. That is a matter of fact.

Ms Lankin: The point I'm making is that you're drawing out this one quote from Ms Croft; this is Ms Croft's opinion, and that's fine, but it will lead us to feel compelled to insert a number of other references to tax competitiveness in other areas of this report from other presenters. I just think perhaps it isn't that crucial.

I'm agreeing with most of the recommendations you're putting forward. This one is a bit of a touchstone because it is an area in dispute, I think, between governments in general--our government and your government, the Ministry of Finance, whoever the political government is--and representatives of the business community about what the real state of tax competitiveness is.

Ms Castrilli: I would concur with that. This is a highly contentious issue. The fact is that the Ministry of Finance has indeed published a report as lately as September of this past year which points otherwise. It does not place Ontario unfavourably in comparison to other tax jurisdictions. In fact, most indicators would indicate that it's fairly competitive.

This is one person's opinion. I think we should probably dispense with it at this stage and not have a whole lot of contradictory elements to this report, which we're quite prepared to do. For everything Ms Croft said, there are others who would dispute it. We could read into the record even the Ministry of Finance itself, and we've solicited from other witnesses during the course of the hearings. I think it just makes it just a neater report if we just did not deal with this very contentious issue. We're not in agreement.

Ms Bassett: I hear what you're saying, but this is an expert witness. It's not just one of the many people who presented. When you're looking at the financial side, there are certain people who have a lot more weight than others in terms of understanding the general thrust of what this is all about in terms of the economy. That's why we're pushing in this particular case.

Ms Castrilli: Experts will differ on this issue, obviously.

The Chair: Question? Shall the amendment stand? All in favour? Opposed? It carries.

We move to pages 2 and 3 and insert A. Mr Wettlaufer, comment? Starting with "The Royal Bank," I'm referring to it as amendment 6.

1430

Mr Wettlaufer: It would be the very first sentence, "The Royal Bank noted that there seems to be an all-party consensus across the country to get the deficit and debt under control," and then resume, "The Royal Bank discussed the effects of the expenditure cuts as presently written."

The Chair: So it's an opening sentence to that paragraph?

Mr Wettlaufer: That's correct.

The Chair: Comments? All in favour? Shall the amendment carry? Carried. B on page--

Mr Wettlaufer: This would be page 2. At the end of the second sentence where it says, "While certainty may help," prior to "Informetrica," there's the insert, "The Bank of Nova Scotia's presentation noted that Ontario is relying on cutting"--

Mrs Marland: Excuse me. Haven't we missed B under Expenditure Cuts?

Mr Wettlaufer: That's the one I'm reading.

The Chair: That's where we are now, Ms Marland.

Mrs Marland: I'm sorry.

Mr Wettlaufer: At the bottom of page 2: "The Bank of Nova Scotia's presentation noted that Ontario is relying on cutting expenditures to tackle its deficit problem, mainly because spending is way out of line with the revenue-generating capacity of the province. The bank cited a study of OECD countries that noted that countries which were successful in reducing their debt burdens cut spending and did not raise taxes. Further, governments which reduced their debt burdens cut social welfare programs and the government wage bill. Governments which did not cut spending in those two areas were unsuccessful in reducing the debt burden." Then we would resume, "Informetrica discussed...."

The Chair: Comments? Shall the amendment carry? Those in favour? Carried.

On page 3 of the handout, starting with Tax Cuts. The amendment, I believe, is on page 4, but yes, page 3.

Ms Lankin: I have one.

The Chair: You have one?

Ms Lankin: I have one.

The Chair: I'm sorry. I was on a roll.

Ms Lankin: I know you were. Actually, Mr Silipo and I would like to put forward one on page 3. This

is actually very minor and very simple. At the top of page 3, it refers to the witness from the United Steelworkers of America. That actually was Hugh Mackenzie and he made it clear, when he was invited as an expert witness, that he was not there on behalf of the United Steelworkers of America. I can quote from Hansard of February 14, page F-289, in which he says:

"If I may, I'd like to correct the introduction the Chair kindly offered. I am employed by the United Steelworkers of America as the research director, but I'm not here in that capacity. I could probably give a lengthy disclaimer about the relationship between the views of the organization for which I work and the views I'm going to express today, but suffice it to say I am here in a different capacity.

"I have the misfortune to be an economist and, in that capacity, I spent the better part of four years working with the Fair Tax Commission in Ontario as the executive director and, along with our research director, Allan Maslove, was responsible for most of the drafting work in the commission report. It is from that experience and that perspective of analysis that I am coming to you today."

I would like that to be corrected to read that he appeared as the former executive director of the Fair Tax Commission.

Mrs Marland: And his name.

Ms Lankin: No, I don't think we have any names that we're putting in anywhere. It's an expert witness.

Mrs Marland: Okay. So you're just going to say "the expert witness who was formerly the executive director" da-di-da.

Mr Silipo: He was here as an expert.

Mr Wettlaufer: Ms Lankin, was he your expert witness?

Ms Lankin: Yes.

The Chair: Yes, he was.

Mr Spina: If I recall correctly, he was asked whether he was associated with the Steelworkers union and he did admit that. I can agree with the way it's referenced here, but I do believe that it was indicated that he is--

Ms Lankin: He's currently the research director for the United Steelworkers of America. He was invited as an expert witness because he is an economist and was the former executive director of the Fair Tax Commission, so that was the capacity in which he was presenting.

Mr Spina: I just didn't want to lose sight of that, Frances, because I can agree with your opinion here that it appears as if he was the witness from the Steelworkers, when in fact he was here for more than that. I just didn't want to lose sight of the fact that he also represented the Steelworkers.

Ms Lankin: No, he didn't. What I read to you was his own--

Mr Spina: Preamble.

Ms Lankin: --comments into the record where he corrected it and said: "I am not here on behalf of the United Steelworkers. I work for them now, but I am here as an economist and the former executive director of the Fair Tax Commission." Those were his own words. I'm just correcting it from his own.

The Chair: Those in favour of the amendment? Ms Bassett.

Mrs Marland: Excuse me interrupting, I hate to do this, but I'm just reading the Hansard from this morning and I think we still have to deal with that motion about whether it was predicted 1996 or current 1996. We might as well clear this up now. I thought we hadn't voted on the "current" or "predicted"

rewording. I see from Hansard we didn't. That was where we split it this morning.

So if we could go back to page 1 and just clear that up, the wording that I'm going to suggest--because I think Ms Lankin identified that in the first sentence, "an assessment of whether predicted revenues and expenditures are on track." Ms Lankin wanted "predicted" changed to "1996," and then we waffled around about whether we should put "current." I'm suggesting that we just leave the year out and put "an assessment of whether current predicted revenues and expenditures are on track."

Obviously, because we're in 1996, we're dealing with the current predicted revenues. If that's acceptable, I think it's combining what Ms Lankin wanted and still leaves in the word "predicted," which is what we need to have, because it is only a prediction. If that's acceptable, Ms Lankin?

Ms Lankin: I don't think there's a problem with that. I was just trying to make the difference between short-term and medium and long-term. I think between all of the changes there, we've done that.

Mrs Marland: Yes, because you've got the long-term stuff at the end.

The Chair: Shall the amendment carry? All those in favour? Carried.

Any other comments on page 3?

Ms Bassett: I just wonder if Alison can clarify--she'll have to take probably a while to find out--what exactly Mr Mackenzie said, and if these are his exact words on lines 2 and 3. I'd just be interested in knowing.

The Chair: "The witness from"?

Ms Bassett: He's the independent expert witness for the--

The Chair: Which lines were you referring to?

Ms Bassett: Lines 2 and 3.

The Chair: Which words?

Ms Bassett: The words "the United Steelworkers of America modelled the effect of \$5 billion in expenditure cuts to finance the tax cuts proposed in the Common Sense Revolution."

Ms Drummond: What I did there was collapse together into one sentence his two assumptions for one of his models, the major model that he works with, which was that the deficit would be eliminated by, I believe, 2000-01--I could check that--and that the tax cut would be 30% of Ontario personal income tax. He then, as I hope this sentence made clear, said that on that model, \$5 billion in expenditure cuts would be needed. Those are all part of the assumptions for his model. There are three elements of those assumptions.

Mr Wettlaufer: Alison, he did not in fact say then that the effect of the \$5 billion in expenditure cuts was to finance the tax cuts? Is that an assumption on your part, or is that what he said?

Ms Drummond: Not on my part, on his part. There are three separate assumptions: that the deficit would be eliminated by the year given, which I believe is 2000-01; that the tax cuts would be 30% of Ontario personal income tax--as he pointed out, there are a number of different assumptions you could make as to the tax cuts--and that expenditures would be cut in such a way as to eliminate the deficit in that year. So those are the three assumptions.

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Mr Wettlaufer: But not that the expenditure cuts were being made to finance the tax cuts. I think we have to be very specific about this. Could you research that? Thank you.

Ms Drummond: Okay, certainly. I thought that was clear.

Mr Wettlaufer: I think it's just necessary to be very, very sure.

Ms Drummond: Sure.

Mr Wettlaufer: Thank you.

Ms Lankin: Could you explain what your concern is? I know that Alison's going to go away and try to rewrite it, but I didn't understand your concerns.

Mr Wettlaufer: That we know exactly what he was saying in so far as the effect of the \$5 billion in expenditure cuts, the reason for it or the outcome of it.

Ms Lankin: What he said, just so that you're aware, is: "To do the analysis, I assumed that the matching expenditure cuts that would be required in order to achieve a balance, along with a tax cut, would be similar to what's been announced today. I don't have a crystal ball," and he goes on to use the \$5-billion figure, so he actually did put those three assumptions together much the way Alison has suggested.

Mr Wettlaufer: Okay. I'll accept that.

The Chair: Anything else on page 3?

Ms Lankin: I haven't found this in Hansard yet, but I'm wondering, Alison, if you know where it is or if you could check it. The paragraph started, "He calculated that 70% of this effect would be felt in the first year of the cuts and 30% in the remaining years." I have a handwritten note that suggests that he was talking about the actual stimulative effect of the tax cut, as opposed to the expenditure cuts.

Ms Drummond: I might have misread that.

Ms Lankin: I'm not sure that I'm right on that, but I think that might be the case. If you could take a look at it, that might need some clarification. I'm trying to find it right now in Hansard.

The Chair: Other changes on page 3? I believe the next amendment--

Mrs Marland: We do have another change on page 3. I don't think we have the witness from Canada Trust.

Mr Grandmaître: What page are you on?

Mrs Marland: Page 3 of Alison's report, "The expert witnesses....," at the bottom--

The Chair: Tax Cuts?

Mrs Marland: Yes. Isn't this where we put the Bank of Nova Scotia?

Interjection.

Mrs Marland: Okay. If you look at page 3 of our handout, under Tax Cuts--oh, I'm sorry, it says page 4.

The Chair: Mr Wettlaufer.

Mr Wettlaufer: In the middle of page 3, where it says, "The Bank of Nova Scotia believes that the spending cuts that have been made will not 'permanently impair the ability of the economy to recover,'" we're asking that it be inserted after the change that I previously requested under Expenditure Cuts and prior to "Informetrica discussed...."

Ms Castrilli: Sorry, are we dealing with B on the bottom of page 2.

Mrs Marland: No, I think you're on the wrong page.

Ms Castrilli: I'm not sure where we are.

Mrs Marland: I know what the confusion is. We've got "Expenditure Cuts" and "Tax Cuts."

Ms Castrilli: I thought you said "Expenditure Cuts," but you mean "Tax Cuts."

Mrs Marland: Yes, it's actually "Tax Cuts."

Ms Castrilli: Fair enough.

The Chair: Mr Wettlaufer, would you explain to us where we are? Which amendment are we talking about on the handout?

Mr Wettlaufer: It's not the amendment; it's from the report here.

The Chair: Okay, we're dealing with Alison's report?

Mr Wettlaufer: Yes, where it says, the middle of page 3, "The Bank of Nova Scotia believes that the spending cuts that have been made will not `permanently impair the ability of the economy to recover,'" if we can move that sentence to page 2, under "Expenditure Cuts," after the change we previously requested and prior to the words "Informetrica discussed some of the calculations" to improve the flow.

Ms Lankin: If I may, we're also talking about the effect of expenditure cuts as testified to by the expert witness who was the former executive director of the Fair Tax Commission. That's what he's talking about as well.

Mr Wettlaufer: But this one sentence is a bank statement which has been inserted into your expert witness statements as well as the union statements, and we're putting it back in with the Royal Bank's statement and the other bank statement.

Ms Lankin: They're all expert witnesses.

Mr Silipo: They just don't like bank witnesses and union witnesses side by side.

Ms Bassett: I think we're talking about banks and the effect of the cuts, positive, and then we go to negative, and then to come back out and say positive again, you can leave the Steel guy on an up note without somebody contradicting him.

Ms Lankin: No, you see, this is a problem, because all the way through the rest of the report it goes back and forth between positive and negative comments and it happens in our expert witnesses as well. Somehow or other, because Hugh Mackenzie now happens to be the research director of the United Steelworkers, you're lumping that, as if not an expert witness, he doesn't have equal standing with all of these other bigwigs from the banks and so you want it to flow into the individual arguments made by public sector unions and others and you don't want that separated. You want the banks somehow out on their own.

Ms Bassett: That's not how we see it, Frances. We're saying we're talking about the people who are on side and the people who are against. Normally, that's how you say. You don't jumble them all up, and if they are jumbled, henceforth we plan to change them so that you get people talking about one side and then you give the other side of the argument, pro or con. It makes more sense.

Mr Wettlaufer: Ms Lankin, if you will read the immediately preceding sentence to the Bank of Nova Scotia sentence that I was talking about, you'll find that the Bank of Nova Scotia is a contradiction of the

previous statement, so I think this would fall in with what you want anyway.

Ms Castrilli: I don't have any problem with the contradiction, Mr Wettlaufer. That's what the hearings demonstrated over and over again, that there were differences of opinion with respect to the effect of these cuts. I don't think that's the issue. I would have thought that from the government's perspective, since you start on a positive note and you end on a positive note, that wouldn't have been something you were prepared to argue about. I don't really understand why you would want to move that sentence at all.

Mr Wettlaufer: This is such a minor item that I'm surprised there's any controversy.

Ms Castrilli: Well, if it's just an issue of form, then we don't have to worry about it.

Mr Wettlaufer: That's all it was.

The Chair: Excuse me. Mr Grandmaître.

Mr Grandmaître: The problem is we say "expert witnesses" and that's where we have a tendency to mix the two, the union people and the experts, if we want to distinguish the two. When we say "expert witnesses," who do we mean?

Mrs Marland: Well, you see, we--

The Chair: Excuse me, Mrs Marland, Ms Lankin has the floor.

Ms Lankin: No, it's okay.

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Mrs Marland: Well, just explain to Ben, because in fairness to him, he wasn't here and each caucus chose I think two expert witnesses, who are called "expert witnesses," Ben. I didn't know that term either before we started the hearings. So we did each select "our own two expert witnesses," and the other people were just deputations. Am I correct that there was a clarification?

Ms Castrilli: That's right.

Mrs Marland: That's why they're referred to this way. But to tell you the truth, I don't have any hangup with this. Let's forget this one.

The Chair: Very good.

Mrs Marland: We'll leave it as it is.

The Chair: The amendment is withdrawn?

Mrs Marland: Yes.

The Chair: Can we move to amendment B on page 3 of the handout, which begins, "The witness from Canada Trust."

Interjections.

The Chair: I'm sorry, I skipped one. It's amendment A beginning with "The Bank of Nova Scotia."

Mr Wettlaufer: We have one that's missing here. On page 2 of our handout-that's okay, we have both "Expenditure Cuts"; we go to page 3 of the handout under "Tax Cuts." The amendment is for page 4.

The Chair: We're still on page 3. If there are no further amendments to page 3, we could move to page 4.

Ms Bassett: I have an amendment to page 3 before you move on, Chair. I have a question.

The Chair: Yes, Ms Bassett.

Ms Bassett: Halfway down in the paragraph beginning "He calculated," there's a line there, "and likely to create employment and economic drag." I wonder, Alison, do you mean unemployment there?

Ms Drummond: I meant "employment" to be an adjective although I know it's not. I meant "employment drag" but I can put "unemployment," if that's correct, which it is.

Ms Bassett: Okay, "to create employment drag."

Ms Drummond: Yes, but I think "unemployment" is better.

Ms Bassett: So what are you putting?

Ms Drummond: I'll put "unemployment." I think that is better.

Ms Bassett: "and economic drag."

Ms Drummond: Yes.

Ms Bassett: Okay.

The Chair: Are there any further amendments to page 3? Shall we move to page 4?

Mr Wettlaufer: This again is one of form. We would like to take the paragraph at the top of page 5 of the report that Alison did, and that paragraph starts, "The witness from the Royal Bank said that a \$2-billion tax cut" and ends with "even with slow growth," and insert it halfway down on page 4, if we could, at the end of the sentence that says "may argue in favour of income tax cuts" and prior to the sentence which says, "Similarly, the Bank of Nova Scotia believes the proposed income tax cut...."

The Chair: Comments?

Ms Castrilli: That paragraph on top of page 5, the first sentence, I think there's a verb missing. I'm not quite sure--what did you intend it to mean?

Ms Drummond: Stated.

Ms Castrilli: Stated. Okay.

Ms Drummond: I'm being generic.

The Chair: Those in favour of moving the paragraph? Carried.

Mr Wettlaufer: Just a few lines below that at the end of the sentence which ends, "concerned about possible changes to the Canada pension plan," that we add from page 3 of our handout:

"A. The Bank of Nova Scotia did note that the tremendous rise in taxation rates in recent years has been a factor which probably dissuades business from investing in Ontario. The witness suggested that moving to a tax regime which is more in line with our major trading partners is essential towards attracting new investment and new jobs to the province." That's from the February 15 issue of Hansard.

Ms Lankin: Once again, I'm going to make the same point. Here we have the Bank of Nova Scotia putting forward its assumptions with respect to the tax competitiveness and issues of business investment. Now, interesting: Put that in the context of 1994 having been the highest record year for business investment in the history of Ontario, and put that together with the kind of information that has

been produced by the Ministry of Finance with respect to tax competitiveness, and it gives a very different picture than the one which--I would agree with you, Mr Wettlaufer--is the perception amongst various parts of the business community, in this case, the financial institutions.

I recognize that this is in fact a statement of a witness, and if you want to put it in that way, then I would ask, would you also agree that we put in information from the Ministry of Finance September documentation which in fact refutes the perception that many of these individuals hold and have put forward to us? The fact that they have that perception, I don't dispute. Repeating it as frequently as it appears--as I look at this--and you want to repeat it in this document gives some credence to a perception which we have hard, cold statistics to suggest is wrong, and gives me concern.

I would like to see if we can either cool the rhetoric on continuing to insert these assertions where they are not necessary to our overall report, or whether we can insert a balance by citing the actual tax competitiveness information provided to us from the Ministry of Finance September document.

Mr Wettlaufer: Ms Lankin, I don't think you would disagree that there has been a significant increase in taxes, particularly for small business, in the province over the last five years, and it does dissuade business from investing in Ontario. It dissuades business from increasing investment in Ontario. It's really just stating what the fact is, and the witness suggested we move to a different type of tax regime.

Ms Lankin: Look at those words: The witness suggested "that moving to a tax regime which is more in line with our major trading partners." The facts are that when you look at our major trading partners, if you look at the comparison in terms of G-7 countries and you look at the comparison in terms of the industrialized Great Lakes states, and broader within the US, overall national averages, we are competitive. In other words, we are in line with our major trading partners.

I don't dispute the Bank of Nova Scotia said those words. I don't dispute it's a perception they wish to promote as they were coming before this committee. All I'm saying is that if you, in the recommendations you're making--this is the second one now--continue to insert those comments which give credence to an incorrect perception, then it lends credibility to that argument coming out of our report. It needs to be balanced with the facts, and the facts are that we are competitive with respect to our major trading partners in terms of all sorts of tax comparators.

I'm suggesting either you take my recommendation from before, that we don't add fuel to this fire by putting that statement in, or we try and get a balance by putting in the actual, factual documentation provided to this committee that comes from the Ministry of Finance 1995 September report.

Mr Wettlaufer: Mr Chair, we stand by our wishes on this one. We wish this amendment in.

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Mr Spina: It was my understanding that this is the highest-taxed jurisdiction in North America. I stand to be corrected, but that was my understanding from what the ministry figures told us. I'd like to see those comparative numbers.

Ms Lankin: If I may remind members of the committee, I circulated them to all members of the committee. You have that. I provided you with your own copy of it because I'd referred to it several times and the ministry didn't have a copy with them. We made photocopies, so you've got that. It shows very clearly that we are not the highest jurisdiction. It compares corporate tax, it compares payroll taxes, it looks at combined property and other levels of taxation on businesses. It compares income taxes and, as I've said, it shows the high marginal tax rates; we are very high but the chart that's not there is at the low end, because we're in fact lower at the low end. We have a more progressive taxation system. So that documentation is all there.

I understand from Mr Wettlaufer's comments that you want to proceed and I don't want to belabour the point. You're going to vote on this and include it. I would ask as a general agreement from the committee that the researcher be able to compile a paragraph from the documentation from the Ministry of Finance with respect to a more realistic view of tax competitiveness which is put in as a counterpoint

to many of these comments that you're including from presenters.

The Chair: Further comments?

Mr Wettlaufer: We agree to that.

The Chair: Are we ready for the question? Shall the amendment carry? Carried.

Further amendments to page 4?

Mr Wettlaufer: On page 4, two thirds of the way down, at the end of the paragraph, it says that "tax cuts are the best way to get them to spend thus stimulating demand." We would like to add: "B. The witness from Canada Trust noted that cutting taxes would provide a very powerful offset to the deep spending cuts and with very strong potential spinoff effects. The witness noted that consumers buy more when they have more disposable income which increases demand and production. This creates additional jobs, additional income and spending."

That's from the February 15 Hansard.

Ms Lankin: On this point, I would make the comment that we seem to want to repeat, almost in its entirety, Ms Croft's testimony before this committee. You already have a sentence in there which states that the Canada Trust witness had a "different rationale for quick tax cuts," talks about the insecurity around jobs and real loss of income and states that "tax cuts are the best way to get them to spend, thus stimulating demand." That already captures the same point that you're making in the next sentence you want to add. I would point to the bottom of page 4: "The witness from Canada Trust was a strong advocate of the tax cut, both to make Ontario more competitive as a tax jurisdiction and as a stimulus after the expenditure cuts." Your points are already covered and Ms Croft is referred to extensively in this section, as I understand why you would want her to be, but I think we might not want to overdo it here.

Ms Castrilli: I want to speak to a slightly different point, so if there's a response to Ms Lankin, I'll forgo until after.

The Chair: Is there a response to Ms Lankin's point?

Mr Wettlaufer: Yes, Mr Chair. We still would like the last sentence of our amendment, "This creates additional jobs, additional income and spending."

The Chair: You're deleting the first part?

Mr Wettlaufer: We'll delete the first part.

Ms Lankin: I think that's very helpful. Could I just suggest that the sentence be structured in a way that it is clear that it was the witness's opinion that, "This creates additional jobs, additional income and spending"?

Mr Wettlaufer: Yes.

Ms Castrilli: This deals with another point on page 4. Reading down at the end of the first paragraph, it says, "Similarly, the Bank of Nova Scotia believes the proposed income tax cut may help increase spending, but that analysis is difficult...." In fact, what the bank said was: "However, the lack of specifics regarding the composition and timing of a tax cut makes analysis of its net impact difficult. There is no guarantee that Ontarians would fully spend their tax saving." It goes on to say that in fact they would save. I'd like to propose an amendment to include that specifically into the body of the text.

The Chair: Is that going to be tied to the proposal under B?

Ms Castrilli: No, I don't think so. I think it would appear just before that, in the sentence that reads,

"Similarly, the Bank of Nova Scotia believes...." I would delete that first sentence and add what the bank actually said.

The Chair: Before we move to that, could we finish off B, as amended?

Ms Castrilli: Happy to do that.

The Chair: Is the committee in favour? All in favour? I believe we are. Carried.

Ms Castrilli: My apologies; I thought we'd dealt with it.

The Chair: My mistake. Go ahead.

Ms Castrilli: I'd like more specific wording in that sentence, as I indicated, to reflect precisely what the Bank of Nova Scotia said. You'll find that in February 15 Hansard.

The Chair: Comments from the government?

Mr Wettlaufer: Could you go over that again, please?

Ms Castrilli: Sure. The sentence now reads, "Similarly, the Bank of Nova Scotia believes the proposed income tax cut may help increase spending, but that analysis is difficult...." I think we should say: "The Bank of Nova Scotia noted that the lack of specifics regarding the composition and timing of the tax cut makes analysis of its net impact difficult. There is no guarantee that Ontarians would fully spend their tax saving. Residents may opt to spend less and save more in this uncertain environment." You'll find that in February 15. I'm dealing with the text of the submission, but it's in here as well.

Mr Wettlaufer: Do you want to show us what the specific wording is? You say you want to take out "believes the proposed income tax cut"--

Ms Castrilli: It's a direct quotation from the bank's submission.

Mr Wettlaufer: It's replacing what words?

Ms Castrilli: That first sentence, "Similarly, the Bank of Nova Scotia believes the proposed income tax cut may help increase spending, but that analysis is difficult...."

The Chair: Is it replacing that sentence or is it in addition to?

Ms Castrilli: No, it would be replacing it because it's more specific. I'm looking for the actual citation. I have the text of the presentation, but I've not found it in Hansard as yet. I'm sure Alison could find it.

Mr Wettlaufer: I believe that the report, as written by Alison, is correct. I wonder if we could add Ms Castrilli's quotation.

Ms Castrilli: I'd be happy to have it added, if that's what you prefer; sure.

The Chair: All in favour of adding the amendment? Carried.

Mr Silipo: There are two additional points which I'd like to suggest be added. I was looking to see if there was a good place to put both, but I'm not sure that I have that, unless we wanted to put them at the end of the section, simply because they relate to the combined effects of the tax cut and expenditure cuts. I appreciate that in this section we're dealing with the tax cut; the previous section deals with expenditure cuts.

They're both comments that were made by one of the expert witnesses, Mr McCracken from Informetrica, who, as I understand it, at least originally was in fact an expert witness chosen by all three caucuses. He makes two points, and I can give the quotes, but I think that there'd have to be some

reworking of the quotes because I don't think just putting in the straight quotes would be sensible, the way in which the report is written.

But the first point that he makes is in dealing with the economic impact of the tax cut as it relates to the fiscal drag. He says the main point that we "should take away is that it's difficult to see with this kind of fiscal drag"--the fiscal drag that comes from the expenditure cuts--"where there's anything positive that comes out of this. It's also not clear at all that at the end of the day one will see any magic worked unless one feels that somehow" our "actions will lead to dramatic changes in interest rates, something which there is no evidence for". I've paraphrased and quoted. That's Hansard, February 6, page F-44. I know that there's some reference to that in the section under expenditure cuts, so it could either be amplified there or, as I said, added at the end of this section.

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The second point is I think even more salient, because it deals with the relationship between the deficit and the expenditure cuts. The point he makes is:

"If you fully funded a tax cut by matching expenditure cuts, depending on how you did it, you could well be back to the same place you were with the expenditure cuts alone in terms of employment loss or even more. If you cut taxes for people who save it and don't create much economic activity from their own actions, and lay off public servants or cut back on welfare payments, which has a direct adverse effect on consumption, you could do worse. You could worsen net, even though your fiscal balance is unchanged."

I think that's an important point to balance off the information that we have in the bulk of page 4, especially in that long top paragraph that obviously reflects largely the position that some of the banks took, I think contrary to what Mr McCracken's expert evidence was. So if that could be incorporated in.

The Chair: You're suggesting that be inserted as a paragraph?

Mr Silipo: Yes, and I'm not particularly firm on where it is. If you wanted to combine both of these points, they could be combined at the end of this section, because I think they could be prefaced with a sentence that pointed out that there was this other perspective offered by Mr McCracken, or the expert from Informetrica, as we're referring to him. Or if you wanted to split them and put them in the other two parts, I don't have any trouble.

The Chair: A point of clarification for Ms Drummond.

Ms Drummond: I'm clear on the first point, Mr McCracken's point about the fiscal drag, but what was the second point that you--

Mr Silipo: The second point he's making is around the relationship, which we don't really touch on directly anywhere here as far as I can tell, between the impact of the expenditure cuts and the impact of the tax cuts having to both be weighed together. That's where I think his quote comes, in answer to a question specifically around that. The second quote is also in Hansard, February 6, page F-48.

Mr Wettlaufer: We have no objection to the two points raised by Mr Silipo. However, considering that they both deal primarily with expenditure cuts, we would recommend that you put them at the top of page 3, right at the very end of the first sentence, which ends "will worsen the already slow provincial economy."

Mr Silipo: I think the second one particularly really deals more directly with the tax cut, because it talks about the need to take into account, if you're going to be doing the tax cut, where that money is coming from to fund that. If you're having to find that money--I think this is what Mr McCracken was talking about in the exchange--if you're having to fund the tax cut through expenditure cuts--that is, money that you have to find by making cuts in expenditures--then he's saying you have to take into account the problems that generates. As he says, you're not going to be any further ahead, at best. It makes, I would argue, more sense for that second point at least to be in the tax cut portion, unless you wanted to

somehow combine both sections. But I think for other reasons it makes sense to have the two parts separately, as Ms Drummond has drafted this.

Mr Wettlaufer: Is it okay to split it: the first part, which is expenditure cuts, put that at the end of the first sentence on page 3, and the second point that you raised, if we put that in the tax cuts on page 4?

Mr Silipo: Yes, I think that's fine. I think the first one deals also more with tax cuts, but I think it makes sense also including the other part.

Ms Lankin: I'm sorry, Mr Wettlaufer. I'm not following exactly where you want to insert that. At the end of which sentence on page 3?

Mr Wettlaufer: At the very top of page 3.

Mr Silipo: Before we go to the expert witness from the Fair Tax Commission.

Mr Wettlaufer: Correct.

The Chair: Do we have agreement? All in favour of the amendments being placed in the aforesaid positions? Carried.

Further amendments to page 4?

Mr Wettlaufer: Mr Chair, it's not an amendment, but it's a clarification. We'd like to know if the first sentence of the second paragraph, two thirds of the way down, is a direct quote, "In general, the idea of concentrating tax cuts on lower-income people, since this group are more likely," etc.

Ms Drummond: I'm sorry, is it--

Mr Wettlaufer: We'd like to know if that's a direct quote.

Ms Drummond: Not that I know of. It was a point that a number of witnesses made, but I don't know if it was in those exact words.

Mr Wettlaufer: I don't know if we can make that generalization. We would give you that, that was made by some witnesses, but on the other hand there were other witnesses who said otherwise.

Ms Lankin: It does say it "was advocated by those witnesses who were most concerned about the macroeconomic effects of the expenditure cuts that have been made." It does sort of qualify it.

Mr Wettlaufer: I'm not sure that's accurate. It's a generalization.

The Chair: If we're going to attribute a statement such as that, is it--oh, I'm entering into the debate. I'm sorry.

Mr Wettlaufer: Go ahead, Mr Chair.

Interjection: It's tempting, I know.

Mr Wettlaufer: It's not a big deal, but we wanted to know. It was a matter of clarification.

Ms Drummond: Certainly the first witness who spoke to that point was Mike McCracken, so I can find Mike McCracken's exact words and reword it in that way.

Mr Wettlaufer: That might be better, Alison.

The Chair: Further amendments to page 4? The next amendment on the handout is on page 6, so can I suggest we turn to page 5?

Ms Bassett: Yes, I have a point, if you just don't mind me screaming. On this second paragraph, "The expert witness"--

The Chair: Which page are we on?

Ms Bassett: On page 5, second paragraph.

Ms Lankin: You can't call him that.

Ms Bassett: I did this, yes. At the beginning it's "The witness from the Royal Bank" and "The expert witness." I just think we have to be consistent, whatever we do, all the way through.

Ms Lankin: I actually think it would be useful on that point, those witnesses who were classified as expert witnesses, to refer to them as expert witnesses going through--

Ms Bassett: Good point.

Ms Lankin: --because we did give them a different status in the process.

Ms Bassett: That's fine. All I was looking for was consistency, so, Alison, it's an editorial thing. Just make sure that all the references, as Frances Lankin pointed out, are consistent.

The Chair: Further amendments to page 5? Page 6, Mr Wettlaufer, you have the middle of the first new paragraph?

Mr Wettlaufer: Bear with us one minute, please. Mr Chair, we recommend that the material on the contingency plan be moved to the section on debt and deficits on page 9, between the second and third paragraphs. That contingency plan would be that area which includes "consider the inclusion of an explicit contingency plan in the next budget," etc.

Ms Lankin: It begins, "Sun Life" argued.

Mr Wettlaufer: It begins "Sun Life" argued "that the government should consider."

Ms Drummond: I will have to make some style changes so it flows properly, but that's clear, yes.

The Chair: Other comments? Is the committee clear--

Ms Castrilli: I'm not entirely sure. You're advocating a separate paragraph on contingency plans?

Mr Wettlaufer: Deleting it from page 6 and putting it between the second and third paragraphs on page 9.

1520

Ms Castrilli: As a separate paragraph.

Mr Wettlaufer: Yes.

Ms Lankin: I disagree with that, and it's not that I don't think it's something that couldn't be repeated in the debt and deficit section if you felt that was important, but it is a comment that is made very specifically with respect to the wisdom of proceeding with a tax cut or not. It's very much related to that, and it's because of the concern about the bottom line on debt and deficit, but it's married to the issue of do you proceed with the tax cut and a contingency plan should allow for different models of potential tax cuts that are achievable and/or scaled back if other assumptions aren't being met.

I think it's very appropriately placed in that tax cut section. If you want to repeat it again in the debt and

deficit, that's useful, but don't take it out of there. It's an important recommendation that the government should consider as it decides whether to proceed with its tax cut or not.

Mr Wettlaufer: We'll give you that.

Ms Bassett: Could I just add one point. I agree. That's fine, Ms Lankin. But if we could just pick it up in repetition saying, "as noted above," blah, blah, and Alison, maybe you could paraphrase just a shorter bit.

Ms Drummond: Yes. That would make for a bad read.

Ms Lankin: That's useful.

Mr Wettlaufer: I think it's important to acknowledge that we realized the importance of the contingency plan, as they recommended, and as you wanted as well.

The Chair: All in favour of that amendment, and moving? Agreed. Other amendments, page 6?

Mr Silipo: Probably one of the few places where I have a slight disagreement with something that's stated here in the draft is I guess that last full paragraph under that section, "The major disagreement among both expert witnesses and business witnesses was the relative priority of deficit reduction and tax reduction." While that I think was clearly one of the major points that we did hear differences of opinion on, I would say that equally so, if not more so than that, was in fact the differences of views that we heard on the question of whether the government's proposed actions would result in the desired job growth. I don't know that that point has been picked up anywhere else.

We heard very clearly from both Mr McCracken and Mr Mackenzie that the combined impact of the expenditure cuts and the tax cuts would not, in their view, generate anywhere near the stimulus necessary to foster job growth. I think that's a point that needs to be made, and I would say equally as strongly as the observation that's made here around the relative priority of deficit reduction and tax reduction.

In fact, I looked back at the table of contents, and I was a bit dismayed, as I sort of got through this now and in the time, to see that in fact while we talk about jobs in the introduction briefly when we refer to some of the predictions, we actually don't have a section or subsection that talks specifically about jobs. Maybe that's something we should insert into the report, either at this point or wherever else it would fit, and then talk about some of the observations that the expert witnesses and others made around that. As I heard from the expert witnesses, indeed as I heard from the minister himself, there seemed to be certainly anything but ringing endorsement that all of this intended action by the government was going to create the jobs that were there, and I think that's a point that needs to be reflected in this report.

Ms Lankin: I support Mr Silipo's point. I would add to it that essentially there was a disagreement about what the combined effects of the tax cut and expenditure cuts would be, both on the government's desired results economically, which I think Mr Silipo refers to in terms of the job growth, and also in terms of the government's desired results fiscally as to whether or not with the numbers as set out will they be able to achieve the deficit number? There is some very mixed opinion that we heard about that. So I think it's important to build that in, and again I think you can find references in both Mr McCracken's and Mr Mackenzie's presentations, and perhaps others, about the combined effect and whether or not it will actually achieve the government's stated desired results both economically and fiscally.

Ms Castrilli: I would just add to that that the contradiction appeared not only in different witnesses but even within the same presentation. You remember the Royal Bank of Canada, for instance, said on the one hand the conventional wisdom essentially said that cuts of that sort would foster consumer spending and therefore jobs, but the other side of the coin is that people might tend not to spend but in fact to save, and if you cut too fast, you also lose jobs. So it's not even a question of different presentations that presented different points of view, but even within the same presentation we had a divergence of opinion. So I would support that on that basis.

The Chair: Mr Wettlaufer?

Mr Wettlaufer: We have no comment other than we'd like to hear the rewording.

Mr Silipo: I think what I'm suggesting is that it's perhaps more than just--at least what I'm suggesting is that I think it's more than just a rewording. I'd like to propose that in fact there be another subsection added at the end, just before we get to other issues. I realize that's a suggestion to move that, but sort of after we finish the section on tax cuts that there be a section on jobs or job growth and that I think we can cull quite easily from the various expert witnesses and others some of the different views that were expressed to us on that point and perhaps ask Ms Drummond to draft something that we could then consider at the next meeting.

Ms Bassett: Where would it go?

Mr Silipo: I would put it right at the end as another section after the section that we're just dealing with on tax cuts.

Ms Lankin: Page 6, before it says "Other issues."

Mr Wettlaufer: Would another place for it be under growth and uncertainty on page 2?

Mr Silipo: I'd prefer it here. Perhaps we could get it drafted and look at it here, and if we think that it can be moved afterwards, we can do that. It seems to me to flow because we're talking about expenditure cuts, tax cuts, both of which are presumably aimed at creating more jobs and I think it follows naturally after that.

Ms Castrilli: I would just add that if you look at the table of contents, jobs isn't mentioned once. I think the people of Ontario would be very surprised to hear that in pre-budget consultations we wouldn't focus specifically on that issue. So I would argue in favour of having a separate section which highlighted jobs which highlighted the different views that we got on jobs and job creation.

Ms Lankin: I agree with that. What I would ask then is that we not lose sight of the other issue that Mr Silipo raised. On page 6 in the final paragraph that deals with the section on tax cuts, the intro to that is, "The major disagreement among both expert witnesses and business witnesses was the relative priority of deficit reduction and tax reduction." As it goes on to explain that, I would like that to be noted as one of the major differences and that another major difference was the impact of the combined effect of the tax cut and expenditure cuts on the desired effect that the government was attempting to achieve with respect to the fiscal agenda, ie, the deficit and debt.

Mrs Marland: I was just wondering how Mr Silipo was going to word what he wants in here in terms of, are you going to directly reference it to particular deputations, so that it's not an editorial opinion but it's--

Mr Silipo: Oh, yes, absolutely. It's very similar, Mrs Marland, to what we've been doing so far, which is I've noted a couple of observations that were made by two of the expert witnesses. I know there are plenty of others, because I remember asking a number of deputants questions and there were responses on the jobs issue particularly. So I think it won't be difficult for Ms Drummond to find, from the variety of presentations, a number of comments that were made which will I think, as in the rest of this, show a variety of views. I think that would be the intent.

Mr Wettlaufer: The one phraseology we have difficulty with is when we say, "The major disagreement among both expert witnesses and business witnesses...." Some of the expert witnesses were business witnesses. I think it would be more appropriate to say, "The major disagreement among witnesses was the relative priority of deficit reduction and tax reduction," because there was a disagreement between various witnesses.

Ms Lankin: Other witnesses had a comment on this as well, so I think that's better.

The Chair: There is consensus on that point? Thank you.

Ms Bassett: There's just one thing: "the relative priority of deficit reduction and tax reduction." Everybody agreed pretty well that deficit reduction was key, even the Steelworkers. Everybody did agree that was a factor. So I don't think it's "priority" that was the disagreement; I think the issue is timing.

Ms Lankin: No, no.

Mr Silipo: That point was made later on.

Ms Lankin: No, in fact it was "priority"--if both were not achievable at the same time, which should take priority. There were those who argued very strongly that the deficit reduction should take priority and those like Ms Croft who said, "No, you should proceed with the tax cut as well because that's absolutely critical to achieving the rest of the fiscal agenda."

Ms Bassett: Okay, I stand corrected.

The Chair: I understood we had agreement that Ms Drummond would draft something along the lines that Mr Silipo was suggesting and that we would have a look at it on Thursday. Do we have agreement from the committee for that? We'll have a vote on that paragraph at that point in time. Thank you.

Mr Wettlaufer: Is there any chance we could see that before Thursday?

Ms Drummond: All the revisions that the committee agrees to make today I will be working on tomorrow and I hope to get to Franco Wednesday morning so that members have a chance to look at them. So I would hope you'll get them on Wednesday.

Mr Wettlaufer: That would be fine.

The Chair: That would be very helpful. On page 6, "Other Issues," the government has a suggestion.

Mr Wettlaufer: We recommend that the "Other Issues" section be moved to the very end as they are miscellaneous items.

The Chair: Could you reference "very end," please?

Mr Wettlaufer: To just prior to the "Sector Report" section, with the exception of the subsection "Monetary Policy." We would like to leave that where it is prior to "Debt and Deficit."

Ms Drummond: I have one question. That seems clear to me. I guess the one question I had was, the final paragraph on page 7 with the bullet points is on the comparative international study which a number of expert witnesses referred to. If the committee is comfortable with that, I'd really prefer to keep that somewhere in this section.

Mr Wettlaufer: We were going to recommend that we move that portion to the section on "Debt and Deficit" on page 9.

Ms Drummond: Sorry about that. I missed that.

Mr Wettlaufer: At the end of the first paragraph on page 9, ending "followed by the government is the correct one."

Ms Castrilli: Just to be clear, we already have an addendum at the end of the first paragraph on page 6. You are suggesting there's one from page 7 as well? Is that how it's going to read? There'll be two

addendums after the first paragraph?

Mr Wettlaufer: Yes.

Ms Lankin: Perhaps we could leave it to Ms Drummond in terms of how to make it flow, because it might make sense to have these two C.D. Howe references together and build on that rather than insert in the middle of it a reference to the contingency plan concept. But at some point we want that built into this section.

Ms Bassett: I think that was the idea, that they be together.

The Chair: Further amendments on page 6? I believe we're finishing with page 6. We move to page 7. Amendments to page 7?

Mr Hardeman: That's done.

The Chair: Any other amendments to page 7? Can we move to page 8?

Ms Bassett: I'm not absolutely wedded to the idea, but what about calling the "Debt and Deficit" section "Reducing the Debt and Deficit" since it's more apt to--if people don't want it, I don't care, but it just seemed better.

Ms Lankin: Are we going to call the "Jobs" section "Creating Jobs" as well? Why don't we, when we see the final report, if we want to do some of that sort of stuff, we could do it?

Ms Bassett: Okay.

The Chair: Dare we move to page 9? We seem to be proceeding. Page 10.

Mr Wettlaufer: We are recommending, three quarters of the way down, under "Taxation" that "The Ontario Taxpayers Federation specifically recommended..." be a new paragraph instead of a new sentence.

The Chair: Any disagreement? So be it. Page 11? Sorry. Mr Silipo.

Mr Silipo: I was just reading back through it to see whether the point was made, but in the section under "Debt and Deficit" or whatever we may end up calling this, there was an important point made in the Ontario Federation of Labour presentation, I think supported by a number of others, which talked about essentially a different way of approaching deficit reduction, which I don't see reflected here. Maybe it is and I just have missed it.

I know there was the comment on monetary policy as a key part of that, and that is reflected in the earlier section on page 8. But I think it would be important to also make the point here that certainly, as I recall, specifically the OFL presentation talked about essentially reducing the deficit through more emphasis and more attention and action by the government on job growth. Again, I'm not sure that's reflected anywhere here in this summary. I would ask that that be inserted.

The Chair: Could we leave it to Ms Drummond to bring something to the meeting on Thursday, with agreement? Very well.

Mr Wettlaufer: Before we go to page 11, I wonder if we could make a minor change to page 10 that we missed. Could we say, "Some witnesses...recommended that the government should take a cautious approach to lowering taxes"?

The Chair: The position on the page, Mr Wettlaufer?

Mr Wettlaufer: Right under "Taxation," the very first sentence: "Some" witnesses.

The Chair: You're suggesting we add the word "Some"?

Mr Wettlaufer: Yes.

The Chair: Comments, questions? Those in favour of the amendment? Carried. We move to page 11.

1540

Mr Wettlaufer: The very first sentence on page 11, that we amend that to read, "The Ontario Taxpayers Federation recommended that the province should also consider" etc.

The Chair: Agreed? Objections? Carried.

Further amendments?

Mr Wettlaufer: Under "Personal Income Tax" we are recommending that we eliminate the very first sentence: "Macroeconomic issues in the personal income tax (PIT) cut promised in the Common Sense Revolution are discussed above, under the economy." We feel the next sentence states the purpose of the section and that the first sentence is not necessary. We would then say, "This section is limited to a discussion..., and take out the word "therefore."

Ms Lankin: I don't understand the rationale for that recommendation being made. I think it is very helpful to indicate to people who might look down the index and turn to the section on personal income tax expecting to read about the commentary on the 30% tax cut and find all of the specific recommendations on tax cuts here and miss the other section. All this does is say that the macroeconomic issues in terms of its impact on the fiscal situation, its impact on growth in jobs, is in the section on the economy; here we're talking about specific formulations. I think it's quite helpful to the report.

Mr Wettlaufer: We'll give it to you.

Ms Lankin: I don't think you're giving it to me. I think it was a bad recommendation that was being made to you, which you just recognized.

Mr Wettlaufer: I was being nice to you. You should be nice to me.

Ms Lankin: I'm not putting that one down on my scorecard as one on my side that I owe you something for, Wayne. That's the only point I'm making.

Mr Wettlaufer: I never keep score.

The Chair: We'll avoid editorial comment on that one as to who the scorekeeper is. Are there further amendments to page 11?

Mr Wettlaufer: We would like to add to page 11 the section from page 12 which begins halfway down the page, beginning, "The Canadian Manufacturers' Association," and includes the three bullets. We would like to move that to the bottom of page 11 prior to the final paragraph, "Citizens for Public Justice recommended."

Ms Lankin: I'm actually wondering, as we go through this, if there might be some sense of consistency in how the reports are put forward. Sometimes the content drives unnecessary formulation and other times there are groups that have different points of view and sometimes there are groups that represent two polarized points of view. I think it's helpful if you go back and forward between polarized points of view rather than what I think you're attempting to do here, which is to bring all like-minded points of view up to the beginning part of the presentation on this issue. It's similar to what you did around the banks earlier. I kind of like it mixed up and going back and forth and seeing a compilation, as opposed to a heavy emphasis on one point of view all up front, which I think gives it, in any person's reading who is reading quickly, a sense of priority in the ordering. I like, instead, to give a balance.

Failing that, if you want to do it that way, then I think there needs to be some indication that some of the comments of presenters who reflect this point of view are as follows, and then you come to presenters who reflect this point of view which are as follows, so that you actually are giving some sense of equal weight. Otherwise, I just worry about the balanced treatment of groups and their opinions.

Mr Wettlaufer: There is some value in what you're saying. However, when you're compiling the final report for the minister to do the budget, I think it's really easier for him and his staff if they have all the coinciding views in the same place.

Ms Lankin: The ones that he's going to listen to. That's right. It's a good point, Wayne.

Ms Bassett: That's not it.

Mr Wettlaufer: You know better than that.

Ms Bassett: It's a question of style. That's all it is.

Ms Lankin: I'll wait until I see the final proposed document, and if I am concerned that there is an imbalance in how it reads, then I'll raise the concern at that point.

The Chair: As far as moving that paragraph, then, do we have consensus?

Mr Grandmaitre: For now.

The Chair: For now?

Ms Lankin: For now they have the majority, actually.

The Chair: So that does not require a vote, then. We'll move it and we'll have a look at it and have a vote after we look at it.

Ms Castrilli: We'll defer.

The Chair: We'll defer? Is that the wish of the meeting?

Mr Wettlaufer: We'll defer now.

The Chair: Thank you. Are we finished page 11? There is only the final short paragraph on page 11. Can we move to page 12? Any other amendments to page 12 or 13?

Ms Bassett: Just a minute. We're still on page 13.

Mr Wettlaufer: Yes, going to page 13.

The Chair: Mr Wettlaufer.

Mr Wettlaufer: We recommend that we eliminate that first sentence, "A few witnesses made recommendations on property taxes." It's really redundant when we go right to the witnesses.

Ms Lankin: I'll just put it on the record. I'm not going to argue it. I object to all of the recommendations with respect to page 13, which simply reorder all of the business presenters and move them up in the government's preferred order and relegate the Canadian Association of Retired Persons to the very end. This is going beyond a stylistic approach.

The Chair: Further comments? Call the question?

Mr Wettlaufer: Not yet, Mr Chair.

We would like to take the section beginning "The Canadian Federation of Independent Business made a series of recommendations," including the five bullets, and we would like to make that first on the page as a separate paragraph.

Ms Castrilli: So you're going to start with "The Canadian Federation of Independent Business"?

Mr Wettlaufer: We would like to make that the first paragraph on the page.

1550

Ms Lankin: "Builders" starts with B and "Canadian" starts with C. I don't know. Maybe there's an alphabetical order that--

Interjection.

Ms Castrilli: It doesn't matter, Mr Chair. It's setting a pattern here that is quite clear.

Mr Wettlaufer: It's only style. Don't you like our style?

The Chair: Mr Wettlaufer, are you moving, on page 13, those four paragraphs?

Mr Wettlaufer: I'm moving that we move the CFIB paragraph up to the first paragraph.

Ms Lankin: This is nuts. All of this on page 13 and on page 14, the so-called stylistic changes may well have been intended that way, but quite frankly what you're doing is moving your preferred presenters up to the beginning of all the sections, from the government's perspective, and relegating those who have any critical point of view to the very end of each section. I find it interesting. I don't think that it is helpful in terms of a balanced perspective. Be that as it may, page 13 and page 14, please let's not go through every one of these as an individual amendment. We will be opposing them all just on the principle that this is an editorial critique of a level that is not necessary by group committee writing. We'll be voting against them all, so let's not do them individually. Let's just move on.

Mrs Marland: So we'll just move the page that's been handed out.

Ms Castrilli: The issue really is, when does form become content? What you're doing here is demonstrating through the form that there is an agenda. I would urge the government to be very careful in adopting that stance. I think the report as written is fairly balanced. It tries to bring forth all viewpoints. Don't try and upset that by imposing a form that will give a different thrust to the report which is not intended at the moment.

Mr Wettlaufer: To show we're being reasonable, we'll leave it as is, as written presently in the report, with the exception of our fourth recommendation on our handout. We would like the Ontario Hotel and Motel Association sentence to be moved from the last sentence on the page to a separate paragraph. We would recommend that it be a third paragraph or added to the second paragraph, but it's not really necessary.

The Chair: Does the first sentence on page 13 stay or go?

Ms Bassett: It can stay if they want.

Mr Wettlaufer: It can stay, but it's redundant.

Ms Castrilli: I have no strong views on that, Mr Chair. It doesn't seem to add very much.

The Chair: We can ask Ms Drummond to review it if it's necessary.

Your amendments on page 14, Mr Wettlaufer, were those included in your comments for withdrawal or

were they--

Mr Wettlaufer: I'd to ask Isabel Bassett to do this section.

The Chair: If they're different, then if I could move back to page 13, we could clean that one up.

Ms Bassett: Page 13, we're going to go with--

The Chair: The only change is the fourth one, the Ontario hotel and motel?

Ms Bassett: To make it a separate paragraph.

The Chair: Those in favour of that amendment signify by raising your hands. Opposed? Carried.

Any other changes to page 13? We'll go to page 14.

Mr Wettlaufer: Mr Chair, we'll withdraw the amendments on page 14.

The Chair: Withdrawn. Any other changes to page 14?

Mrs Marland: You'll notice we listened, Frances.

The Chair: Margaret got the look. You got the look.

Ms Lankin: No. It was a laugh that she got.

Mrs Marland: I didn't think it was a bad look.

Ms Lankin: She understood.

The Chair: It's not the Chair's purpose to understand.

Ms Lankin: That's right.

The Chair: Can we move to page 15? Comments on page 16?

Mr Wettlaufer: On page 16, one third of the way down, at the end of the first paragraph it says, "Finally, a few witnesses recommended that the government should oppose harmonization of the GST and RST and should instead encourage the federal government to fulfil its campaign promise to eliminate the GST." We feel it's important that we clarify who the few witnesses were who opposed harmonization.

Ms Castrilli: Just to comment, if we're going to do that here--it occurs earlier on as well when we talk about harmonization--in that particular section we only deal with the ones that are for and not the ones that are against. Just to be consistent, I think we would want to have that repeated in both sections. It occurs about four or five pages earlier, I believe. I haven't got the section in front of me right at the moment, but when you're reviewing it, Alison, you might just check the consistency in the two sections.

Ms Drummond: I'm sorry. Which section were you concerned about?

Ms Castrilli: I believe it's in the section on taxation, but I'm trying to find it.

The Chair: It was in reference to which issue? GST and PST?

Ms Castrilli: It has to do with the harmonization. Yes, it occurs before as well, but it only deals with the ones that are in favour of harmonization.

Ms Drummond: Yes, I see where you mean.

The Chair: That is a point of clarification, so I don't believe that needs a motion. We'll just clarify that. We're all in agreement? Thank you.

Other retail sales tax issues, any comments concerning that section on page 16? Page 17?

Mr Wettlaufer: On the top of page 17, the Canadian distillers' association--this is a small amendment--I believe should be the Association of Canadian Distillers. We recommend that it be moved to the section under other taxes, because they are not sales taxes; they are alcohol taxes.

The Chair: Do you have a location in other taxes that you would like it placed in?

Mr Wettlaufer: At the bottom.

The Chair: Do we have agreement on that point? All in favour? Carried.

Other comments on page 17? Page 18?

Mrs Marland: That's it, Mr Chairman.

The Chair: The top of page 19?

Mrs Marland: We don't have any other amendments to the balance of the report, I believe. I don't know if anyone else does.

Mr Silipo: I just wanted to suggest that the section on agriculture be expanded perhaps by another paragraph or two. I think this is a useful summary, but it doesn't really say what the federation recommended with respect to those issues. I appreciate that you could go very long and be in detail, but I think something more than what's here would be useful. Although it was only the one presentation that dealt with agriculture, given that it comes from the federation I think it should be expanded a little bit more than that.

Ms Bassett: I agree with you totally. I wrote this whole page last night on agriculture, so thank you for saying that. Maybe Alison could do it.

The Chair: Are there any further amendments to the report?

Ms Bassett: In the section on page 23, if we're on that, manufacturing has three lines, and maybe we should expand it. It might come into creating jobs somewhere. It just has three lines. It seems small, considering the role it plays in our economy.

The Chair: Anything further?

I think we had agreed to a 4 o'clock deadline. I want to commend the committee for meeting that deadline, almost.

Interjection: I'm shocked.

The Chair: Not as shocked as I am.

I know that we have a number of colds from the road, or flu or everything. It's been an exciting four weeks and we look forward to next Thursday. Thank you very much. Did you have a comment, Ms Lankin?

Ms Lankin: Just a question about procedure for Thursday, given that some of us in this room have not been through report-writing before. Having now dealt with the content of the work that Ms Drummond has done, and we will finalize that on Thursday morning, there is then a process of dealing with recommendations. Could someone describe how you expect that to unfold?

The Chair: I understand that when the report is resubmitted, the amendments or the changes to the report will be highlighted, so it will be a fairly expedient process to go through those amendments. We will then move into the recommendations, as I understand it, and we will have discussions on those.

Ms Lankin: On what recommendations?

Mrs Marland: They would just be bolded, wouldn't they?

Mr Carr: What has happened is that all three parties come forward with what their recommendations would be, we debate, there may be unanimity on some of them, and historically what you try to do is get some of the things--make no mistake about it; the recommendation that there's all-party consensus on going to the minister is going to have more weight. It may be, "The deficit is a problem," or something we can agree on.

On Thursday, everybody should come with their recommendations of what they would like to see happen, very specific recommendations. If anybody is interested, all they need to do is look at last year's reports of some of the things that were brought forward. We debate them; usually we can't agree on a lot of them, but on some we can. Failing that, if the other two parties in opposition have some recommendations that the government doesn't agree with, then they can table their dissenting opinion, I guess is the technical name, not minority. I was corrected last year. It's a dissenting opinion.

My suggestion would be that everybody on all three sides come with recommendations of what they'd like to see the Minister of Finance do in the next budget.

The Chair: Again I thank the committee for their cooperation this afternoon. We stand adjourned until Thursday at 10 am in room 228.

The committee adjourned at 1604.

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LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 FINANCE AND ECONOMIC AFFAIRS**

Thursday 7 March 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DES FINANCES
 ET DES AFFAIRES ÉCONOMIQUES**

Jeudi 7 mars 1996

The committee met at 1003 in room 228.

PRE-BUDGET CONSULTATIONS

The Chair (Mr Ted Chudleigh): We will call the meeting to order. I'd like to welcome the committee back. The amendments to the report were circulated, I believe, yesterday afternoon to most members. The changes have been highlighted. I'm in the committee's hands. Should we go through them one by one?

Mrs Margaret Marland (Mississauga South): I would suggest, Mr Chairman, that we ask people if they have any changes or additions or comments on the revised report. I think that would be a faster way to deal with it, so we can go right to the page that they might want to address.

The Chair: If we could start at the lowest page number, who would have any amendments or changes or concerns within the first 10 pages, or within the first five pages?

Ms Isabel Bassett (St Andrew-St Patrick): We do have a change on page 2.

The Chair: Page 2. Are there any changes to page 1 then?

Ms Bassett: Ms Marland is going to do it, given my voice.

Mrs Marland: On page 2, the top of the page, obviously the highlighted area. Just to lead into that, if you go to the bottom of page 1, you'll see that the paragraph starts on the bottom of page 1 and reads, "Part of the minister's presentation," and then it says, "He noted..." etc. So when you get on to the top of page 2, it's still quoting the minister, and when you get to the last sentence of page 2, "Ontario's per capita provincial spending"—I think, if I'm correct, that was your sentence, Ms Lankin. I would like to suggest that Ms Lankin's sentence go into another paragraph since it's not attributable to the minister, and then I do have an addition. Is it acceptable that we put that into another paragraph?

The Chair: Are there any concerns about placing that final sentence into another paragraph?

Ms Frances Lankin (Beaches-Woodbine): I guess it depends on where it gets placed.

Mrs Marland: No, no. Just right there.

The Chair: I understand it's right there.

Mrs Marland: Just to start another paragraph.

Ms Lankin: Sure. That's fine.

Mrs Marland: Okay. Now then, I would like to add, and if you want this in another paragraph or following Frances's sentence—it probably should be another paragraph, I guess. If you have your Hansards, I'm referring to page 1115-2 of Hansard of the first day, still in the minister's comments.

Ms Lankin: What page number again, please?

Mrs Marland: Page 1115-2. It's the top of the page. I've only Xeroxed mine because I didn't bring the Hansard up. I'll read it to you. I was going to add, "However, combined"—the "combined" is right out of Hansard—and it says, "However, combined provincial-local program spending in Ontario was higher than average per person for all provinces in 1993-94 and in each of the three preceding years prior to 1993-94." Have you found it?

Mr Tony Silipo (Dovercourt): That's a minister's reference, is it?

Mrs Marland: Yes.

Mr Silipo: I would want it to be clear that it was, Mr Chair, because I don't think I agree with that.

Mrs Marland: You may not agree with it, but I'm just adding it because—

Mr Silipo: Oh, no. I'm not quibbling with the fact that the minister said that. I just want to be clear that if we're putting it in, it's under the context that the minister said that, because I think he's wrong.

Ms Lankin: I was going to actually object to the addition on the basis that all of the information which you've quoted from the minister that's already been incorporated into the draft report is with respect to Ontario. If in fact you want to start making combined comparisons, provincial and municipal, for example, with respect to debt loads, we know that there is a very different balance in other provinces where municipalities have taken on a greater proportion of debt than here in Ontario, where we have tended to maintain the debt at the provincial level. Quebec is a very good example of that, a very high level of indebtedness at the municipal levels, and in fact at the provincial level there as well.

We're either comparing provincial stats, or we're comparing combined stats, and that would mean going back and including a lot of other information. While I understand the political point that you're attempting to make, we added one sentence which gave a slightly different perspective on all of the above information that the minister had put forward on provincial debt, accumulated debt. We added one sentence which gives it a bit of a broader perspective. It says, "However, look, this is also a factor."

If you want to make a provincial-municipal comparison, then I think the appropriate way to do that is to go back and do that on issues of debt as well. So I would encourage you to drop that suggestion at this point in time. I don't think it contributes greatly to the public's understanding of the situation. I think it is a confusing comparison if you're not consistent all the way through in terms of combined municipal-provincial statistics.

1010

Mrs Marland: If I may respond, Frances, the sentence before yours says, "Ontario's public debt interest in 1995-96, at \$8.9 billion or 18.8% of revenues, is the second highest among all provinces after Nova Scotia at 19.3%."

We already have talked in this paragraph about all provinces, and my addition simply says combined provincial-local program spending in Ontario was higher than average per person in all provinces.

Ms Lankin: I'm sorry. Maybe I wasn't clear.

Mrs Marland: No, I hear what you're saying about the combination, provincial and municipal.

Ms Lankin: Your response to me was that in the sentence before the per capita provincial spending comparison of provinces you were looking at public debt comparison of provinces. I agree with you; that the exact point I'm making. The addition that you want to make starts to look at per capita spending on a combined analysis of provincial and municipal. My point would be then, if you want to contrast that, you need to contrast it to a combined provincial-municipal debt comparison, which is not what this paragraph is all about. This is all about interprovincial comparisons, not combined municipal-provincial.

Ms Bassett: Ms Marland makes a point, but I think we should allow Ms Lankin's point and take out that last reference. But we are going to have this sentence made separately, if that's all right.

Ms Lankin: That's fine.

The Chair: Other changes?

Ms Bassett: On page 2.

The Chair: That's an additional change on page 2, Ms Bassett?

Ms Bassett: Yes, that's the only change on page 2, right.

Ms Lankin: So the only change on page 2 is to make that sentence a standalone paragraph.

Ms Bassett: That's right.

The Chair: Who would have the next change? Any-thing up to page 5?

Our writer would like to ask a question about page 3.

Ms Alison Drummond: At the bottom of page 3, just three lines up from the bottom, it talks about the Bank of Nova Scotia's presentation, about the bank's citing the study of OECD countries. I was just wondering if the committee wants that study discussed both on page 3 and on pages 10 and 11, because that is the same study that they were citing, just in terms of whether the committee wants that discussion basically repeated. Both summarize the study.

Ms Bassett: I think as long as you indicate that it will be discussed below on pages whatever—and then if you refer, when you get to the second reference, "as discussed above."

The Chair: Anything before page 10?

Mr Gary Carr (Oakville South): Just a second, Mr Chair.

Ms Bassett: We'd like to just add—

The Chair: What page are we on?

Ms Bassett: We're on page 9. If we're going to add to the new section that was created called "Job Creation" which Alison did, we just wanted to add—and I want to

read it out. It comes from Hansard 15, page 5, I think F-336: "Now we're at the forefront in terms of profitability and their ability to generate income and output in this province, in this country."

That's just carrying on with the Bank of Nova Scotia's—the expert witness. His quote is just carried on. Then we'd like to add, from the Canadian Chemical Producers, again from Hansard, Wednesday, February 7, page 1010-2. This is the quote:

"Eventually, the spending restraints and other positive government policies will help the private sector to grow and to offset the effects of government restraints. In the shorter term, the promised reduction in personal taxes will help cushion this blow."

Ms Lankin: Where are we?

Ms Bassett: I'm on the Canadian Chemical Producers' Association from Hansard, Wednesday, February 7.

Ms Lankin: To be added where? Sorry, Isabel.

Ms Bassett: To be added on page 9 to the job creation section that Alison was building.

The Chair: So it would be inserted just above the monetary policy?

Ms Bassett: That's right.

Mr Gerry Phillips (Scarborough-Agincourt): Just so I'm clear on where the job references are there in those comments. The first comments were the Bank of Nova Scotia saying they would see job creation as a result of that. I thought the chemical producers' comment you just read was around income as opposed to jobs.

Ms Bassett: I'd have to go back and look at the context.

Ms Lankin: Could you give us the reference again? I've got the Hansard here.

Ms Bassett: I'll get out the Hansard, February 7, 1010-2.

The Chair: That's Instant Hansard that she's referring to.

Ms Lankin: What's the lead-in to the paragraph?

Ms Bassett: The lead-in to the paragraph is, "Eventually, the spending restraints and other positive government policies."

Ms Lankin: Is this in their presentation or in response to a question?

Ms Bassett: It's in their presentation.

Ms Annamarie Castrilli (Downsview): Is that the beginning of the paragraph, "eventually"?

Ms Bassett: Yes, the part that we were inserting is in the beginning of the paragraph.

Ms Lankin: I can't see that in Hansard.

Ms Castrilli: There's no paragraph that starts with "eventually" in their presentation.

Ms Bassett: It's the fifth paragraph from the bottom. Oh, no, because they don't have Instant. There's no point looking at it. They've got the original.

The Chair: It's my understanding that the copy Ms Bassett's working from is the uncorrected copy, and the lead-in to the paragraph may very well change because of a correction.

Ms Castrilli: That's our problem.

Ms Bassett: We could go back to the part where you see, "A CCPA score card and text assessing the competitiveness."

Mr Phillips: We have it. It is not in the context of jobs that they're mentioning this, is my—

Ms Bassett: Okay. We won't push that, Mr Phillips. On second reading of the whole thing, I think you were right.

1020

The Chair: Okay, the chemical quote is withdrawn. What about the continuation of the comment to the Bank of Nova Scotia? Does that stand?

Ms Castrilli: Could we have that again? We didn't really follow it. What's the Hansard citation?

Mr Phillips: This is a younger Mr Carr here.

Mrs Marland: That's what I said.

Mr Carr: Margaret has been bugging me for years to keep it short.

The Chair: Spring is here; we're shearing these days.

Mr Carr: She bugs me and Mike about our hair and I listened to her. The Premier, I don't think, did.

You wanted the quote? It's, "Now we're at the forefront in terms of profitability and their ability to generate income and output in this province, in this country."

Ms Castrilli: And that occurs where?

Mr Carr: February 15, page F-336.

Ms Castrilli: I don't think that's their presentation. That's in response to a question, is it? I think it is. It's not the text of their presentation.

Mr Carr: I'm not sure if it was in response to a question or not.

Ms Bassett: No, I don't think it was. I don't recall that it was. It was a continuation of the quote pretty well that was put forward to start with.

Ms Castrilli: Could you just give us that quote again? We're having some difficulty locating it exactly. It's in a response, yes?

Mr Carr: It is in a response.

Ms Castrilli: It's the paragraph that starts "obviously," is that the one?

Ms Lankin: No. "You have to remember, too, if I could add just one comment...." The first paragraph in Mr Gempel's response on F-336 and it's the last sentence in the first paragraph.

The Chair: Have we found the quote?

Ms Castrilli: Yes, we have, but I don't know that it helps.

Mr Phillips: My only challenge, Mr Chair, is that I don't see any reference to jobs in there. I realize it's something you may want to put in the report somewhere under corporate profitability, but I can't find the word "jobs" in there, nor was he necessarily correlating profitability to jobs, that I can see there. It just seems out of place under "Job Creation."

Mr Joseph Spina (Brampton North): I concur. It doesn't have any real—other than there are impediments. Those elements ought to be referred, I think, in a different area that can be addressed in a whole lot of other ways.

Ms Bassett: It probably doesn't matter, but since Alison already brought up the subject, at that point we were just continuing on to get the thrust of the whole discussion; that's why we put it there.

Mr Monte Kwinter (Wilson Heights): The concern I have with that particular quote is that if you read it in its

context, he talks about going through this terrible recession and now that that's behind us, we're at the forefront of things changing; not that it has changed, but we're at the forefront. It could change and it could not change. I just think if we're using it, we have to make sure that it isn't someone saying things are going to be much better. He's saying that we've just gone through this terrible recession, we've downsized, we've got sort of the basis where we should be able to go forward. It's a little bit different than saying that we are going forward.

Mr Phillips: Not to be provocative at all, I hope, but I think actually what the Bank of Nova Scotia was telling us was that the manufacturing sector in Ontario for the last probably 10 to 15 years has been investing heavily in capital, and even though output has been going up, employment has been going down as manufacturing picks up the benefits of capital investment. I think what the Bank of Nova Scotia was alerting us to is that the service sector is on the edge of that as well. So I think they were actually alerting us to a problem in job creation rather than almost the opposite of saying that we're on the verge, certainly in the financial service sector, of significant job creation. So I guess that's just another reason why I think it may be contradictory almost to use the Bank of Nova Scotia's comments on the fiscal side to support job creation when the witness I think was suggesting that we should anticipate potentially fewer jobs in the financial service sector at least.

Ms Lankin: I don't know if it helps at all, Isabel, but in reading that actual quote, it doesn't really follow on from what Alison had recapped; in fact, it precedes it. Alison's reference to the Bank of Nova Scotia actually is from the paragraph that follows the sentence you were going to insert, where they go on to talk about the rationalization in the manufacturing sector, now starting to see "companies able to generate better earnings performance and maintain high levels of output." But we know there haven't been jobs as a result of that. It then goes on to say the service industry is going through it right now and then makes the case that in fact governments should do it too; it's now time for governments. So it's really not about job creation or anything.

Ms Bassett: Let's take it out.

The Chair: Withdraw it? Further changes? I note a sentence removed on page 10. Page 11. We move through a section without many changes. Does the government have any other changes they wish to propose?

Ms Bassett: No. Those are all our changes.

The Chair: Are there any changes from the opposition that they wish to comment on or propose? Any changes from the third party that they wish to propose?

Mr Silipo: We consider ourselves to be the opposition.

Mr Phillips: Let's not get into a scrap here.

Mr Silipo: The Chair was being picky; I thought I'd just respond.

The Chair: The Chair is reminded of his position as Chair and makes no comment, but it's probably the most difficult thing I've done.

1030

Ms Lankin: Mr Chair, I'd tell you you were doing a good job too, but the last time I did that to Jack Carroll

he got heck from his committee members for weeks afterwards, so I won't say that to you.

The Chair: Thank you, I appreciate that.

There being no further amendments, are we prepared to move the report?

Mrs Marland: No, we're into recommendations.

The Chair: Oh, we want to make some recommendations. The parties were asked to bring recommendations with them. I assume we have some of those. Perhaps now would be a time to distribute them.

Ms Bassett: We have our recommendations, but we didn't expect to be through so quickly. A new typed-up copy is coming over. Can we start and I will read out the recommendations one by one, that I just do one and we can discuss it? Whatever you want, Mr Chair. Do you want me to read them all?

The Chair: If we have a copy of them, we can have them copied very quickly. I think it's difficult to discuss something after it's been read as opposed to—

Mrs Marland: It's much easier to have it in front of you. That's why I was looking forward to having theirs in front of us. We have a copy of ours, but we have some changes and that's why it's being retyped.

Ms Bassett: We have the recommendations. We're just going to get them copied. Could we have a five-minute break just to keep you from waiting for five minutes?

The Chair: A five-minute break? If you'd like to give your recommendations to the clerk, we can have them all copied.

Mr Phillips: Well, we're ready to go. Do you want to go?

The Chair: Okay, we'll start with the Liberals' recommendations.

Mr Wayne Wettlaufer (Kitchener): Mr Chair, it might help to have a five-minute recess anyway. We might want to avail ourselves of the facilities.

The Chair: You're on your own.

Mr Phillips: Do you want me to begin, Mr Chair?

The Chair: Please, Mr Phillips.

Mr Phillips: What we've tried to do here is to put forward recommendations that we hope can get all-party agreement, so we've kept it quite simple. With one exception, I think they're plans the government plans to implement anyway, so I don't think the government members will have difficulty with them. Rather than having a government report and two minority reports, I think it's best if we can find a way to get one report. We've got four recommendations here. If you want me to read them into the record, I'd be happy to do that.

Mrs Marland: Just before you start, Gerry, I wanted to ask you if you'd given that first sentence to Mr Martin yesterday.

Mr Phillips: Actually, I got elected here, so I focus almost all my attention here. I'm full-time at this job.

"(1) Job creation should be the most important criteria against which the budget is measured. The new government has committed itself to seeing 725,000 net new jobs created between January 1, 1996, and December 31, 2000. This budget must indicate the plan to achieve this.

"(2) The people of Ontario were assured of three clear program commitments. They are as follows: 'the plan guarantees full funding for health care, law enforcement

and education spending in the classroom.' We expect to see the budget honour these commitments.

"(3) The government should cancel its planned \$5-billion tax cut in order to focus on dealing with the deficit. The people of Ontario are prepared to join together to fight the important battle of the deficit, but they are not going to join together if a majority of the expenditure cuts are used to fund the tax cut, especially when a majority portion of the \$5-billion tax cut goes to families making over \$90,000.

"(4) The government should incorporate in the budget the budget recommendations of the government-appointed Ontario Financial Review Commission."

The Chair: Comments?

Mr Spina: I don't know whether Mr Phillips wanted to comment on each of them and then we respond in turn. How do you want to proceed with this?

The Chair: Certainly. Would you like to have a few minutes to speak to them, Mr Phillips?

Ms Lankin: Mr Chair, a procedural recommendation. It strikes me that while we eventually will have to deal with the recommendations individually, it might be helpful to have all parties' recommendations read into the record. By the time we conclude doing that, the government might have their recommendations here. Then we all have a sense of the nature of the tone of all the recommendations that will be before us. There may be some that are quite similar from all three parties, or two of the three parties, that we might want to combine and/or support. I think that might be a helpful way to proceed.

The Chair: Would you agree, Mr Phillips?

Mr Phillips: I don't have a problem with that, as long as I have the chance to speak first on these things.

The Chair: I'll see to it.

Mr Phillips: I appreciate that.

The Chair: Ms Lankin, would you like to read yours?

Ms Lankin: Thank you very much. I would like to read the report into the record. We do have some background rationale, which I'll read through fairly quickly, but I would like it to form part of Hansard.

"The government's economic direction, combining drastic cuts to public jobs and services with a reckless tax cut, is dangerous for Ontario. It risks depressing an already fragile economy, as the committee heard from expert witnesses.

"In his Common Sense Revolution, Mike Harris promised a job creation plan to 'generate economic growth and investment and create more than 725,000 jobs.' With the government's approach, there is no hope of achieving this promise of 725,000 new jobs. In fact, these economic policies could push Ontario into recession and produce layoff notices for many thousands more Ontarians.

"The proposed Tory tax cut, while putting money in the pockets of the richest Ontarians, would cost \$28 billion over the next five years, based on the plan spelled out in the Common Sense Revolution. Just the extra interest on money borrowed to fund the tax cut will cost the people of Ontario \$4 million per day.

"Meanwhile, the government is already slashing jobs and public services far more than is necessary, all to pay

for this tax cut. The Common Sense Revolution's guarantees of full funding for health care and classroom education have given way to the first wave of layoff notices in Ontario schools and hospitals.

"Unfortunately, the government's lack of openness has made it extremely difficult for this committee to do its job. The Finance minister has provided no medium-term data, no growth projections and—worst of all—no information about the costs of the impending tax cut.

"But even with the sketchy information available to the public, the committee must urge the government to abandon its job-killing policies, invest in economic development, consider the impact on the most vulnerable and adopt a balanced course of deficit reduction.

"Each of the expert witnesses before this committee pointed to the current fragility of the Ontario economy. Each of the experts—including the government's own witness from Canada Trust—said the Mike Harris spending cuts are having a negative impact on retail sales and jobs, dragging down the overall economy. 'Ontario is attempting to downsize government's share of the GDP in the province at a time of relatively weak economic activity,' said the Canada Trust witness. 'I think that this does run the risk of tipping the province into a period of sustained sluggish growth.'

"According to the expert witnesses, Ontario is experiencing at best a soft recovery marked by low job growth and weak consumer performance.

"The experts disagreed on the probable stimulative impact of a cut in income taxes, but they all agreed that the tax cuts will not be entirely translated into consumer spending. The eventual impact is subject to the overall strength of consumer confidence, which in turn is affected by the overall employment picture, yet jobs are being killed by the spending cuts required to pay for the tax cut.

"The lack of specifics regarding the composition and timing of the tax cut makes analysis of its net impact difficult,' said the government's expert witness from the Bank of Nova Scotia. 'There is no guarantee that Ontarians would fully spend their tax saving.'

"Only one expert witness provided a detailed economic analysis of the combined impact of the government's agenda, demonstrating that it could translate into potential loss of 125,000 jobs. In addition, four of the five expert witnesses said the risk that a tax cut would prevent achieving a balanced budget was serious enough to warrant reconsideration of the Tory pledge to cut income taxes by 30%.

"After balancing all the presentations, the conclusion is clear. The plans outlined by Finance minister Ernie Eves in his opening presentation would not help achieve the government's promises of 725,000 new jobs and a balanced budget in four years. The government's plans would take Ontario in the wrong direction. Therefore we make the following recommendations:

"Recommendation 1: The Ontario economy is in real danger of slipping into recession. The government should take note of high unemployment and a depressed consumer outlook. Deep spending cuts will make the situation worse by killing jobs and destroying vital public services.

"Therefore, the government should embark upon a course of balanced deficit reduction to strengthen, rather than weaken, the province's economy.

"Recommendation 2: The government's promised 30% income tax reduction will not have the hoped-for stimulative impact on the fragile economy. The benefits of the tax cut will go primarily to the most wealthy, and there will be \$28 billion of lost revenue to the province. This is the real explanation for the deep cuts the government is imposing in jobs and services.

"Therefore, the government should abandon its plan to introduce a cut in personal income tax and instead maintain a balanced deficit reduction plan.

"Recommendation 3: The economy requires some stimulative activity, as pointed out by all expert witnesses. The proposed tax cut would offer some stimulation, but this would be offset by the slashing of jobs and services needed to pay for its implementation, leading to a general decrease in economic activity.

"Therefore, the government should consider other stimulative tools, such as capital spending and investments in economic development to support growth in jobs and the economy.

"Recommendation 4: Consumer confidence, political stability and the overall level of training and health of the population are important considerations for increasing business investment.

"Therefore, the government should keep its campaign promises to protect vital public services, such as health care and classroom education, and restore the damaging cuts that are already causing thousands of layoff notices in schools and hospitals.

"Recommendation 5: The expenditure cuts announced to date have had the worst impact on the most vulnerable. Women, children, seniors, the poor, sick and the disabled have been hit the hardest. At the same time, the government's proposed 30% tax cut would benefit disproportionately the most wealthy in Ontario.

Therefore, the government should take into account its responsibility to all Ontarians in shaping a more balanced program of spending reductions."

The Chair: Thank you. Do we have—

Ms Bassett: No, we do not. We'll have them in five minutes, we promise, if we could recess.

The Chair: Could I suggest a five-minute break? Thank you.

The committee recessed from 1043 to 1053.

The Chair: Can we reconvene the meeting. I'm glad next week is March break. I think the committee needs a holiday, or at least a rest.

We now have a copy of the government's recommendations. Would someone like to read those into the record?

Mrs Marland: Yes, I'll read them.

"Recommendation 1: The government should honour its commitment to reduce the deficit and balance the budget by the fiscal year 2000-2001.

"Recommendation 2: The government should find the necessary savings needed to balance the budget.

"Recommendation 3: The government should reduce personal income taxes to stimulate job creation, investment and consumer confidence.

"Recommendation 4: The government should continue to eliminate red tape and unnecessary regulation and reduce the barriers to investment.

"Recommendation 5: The government should proceed with its plan to reduce the employer health tax burden on small and medium-sized businesses, Ontario's largest job creators.

"Recommendation 6: the government should consider creative initiatives such as providing tax support through crown foundations to assist various sectors in the necessary restructuring.

"Recommendation 7: The government should work with the federal government to end regulatory overlap by ensuring that only that level of government best suited to regulate a particular activity does so.

"Recommendation 8: The government should continue discussions with the federal government with a view to harmonizing Ontario's retail sales tax with the federal goods and services tax provided that any harmonization of the two taxes does not increase the tax burden on Ontarians.

"Recommendation 9: The government should honour its commitment to eliminate the gold-plated pensions of MPPs.

"Recommendation 10: The government should address the inequities and associated problems of the property tax system in Ontario.

"Recommendation 11: The government should define its core business, restructure to meet the needs identified and focus its resources on them.

"Recommendation 12: The government should review the regulations of provincially regulated financial institutions to ensure that such regulations do not constitute a barrier to accessing capital by small and medium-sized financial institutions. The government should also work with the federal government to ensure that federally chartered banks do not restrict access to capital for small and medium-sized businesses.

"Recommendation 13: The government should request that the federal government reduce federal programs to the same degree that the federal government is reducing transfer payments to provinces."

That's the end of the government recommendations to this report, and I so move.

The Chair: If each of the parties would like to make a brief comment, we will start with Mr Phillips.

Mr Phillips: I'm not sure whether you want to take each of our recommendations one at a time or want to try and cover all four recommendations. It may be a problem trying to cover all four with one comment, so I suggest we take them one recommendation at a time.

Our first recommendation, as I think the members recall, was around the jobs situation. I think all three parties accept—I think we do—that this is probably the number one issue in Ontario; certainly our party does. I think the number of 725,000 net new jobs over the five years is one the government has often used in the Legislature. I think it's the cornerstone of the platform, so I would think it's in all our best interests to make sure the government spells out in this budget its plans for how it's going to see that happen. This may be one recommenda-

tion that all of us can support; I think it's worded in a fairly non-partisan way.

The Chair: Would you like discussion on this and then we'll vote on them individually?

Mr Phillips: I suspect that may be the best way, because otherwise we're—

The Chair: Shall we proceed, then? Are there comments from the government or the third party?

Mr Silipo: We of course would support this particular recommendation. I find it really interesting when I look at the government's recommendations, and I know we're going to talk about those more specifically in a bit. While they reiterate a number of the promises made in the Common Sense Revolution, I would have thought one about recommitting themselves to the 725,000 jobs would have been first, or maybe second, right after the tax cut, but it's not there at all. There are 13 recommendations, and it's not there at all, and I think that's strange.

1100

We did hear through the presentations, particularly through the presentation the Finance minister made—and we make this point in our recommendations and in our conclusion so far. We don't think the plans the Minister of Finance outlined will get this province to the 725,000 jobs, and that may be why we don't see that reflected in the recommendations from the government members. If we're wrong, and the minister and the government still believe in the 725,000 new jobs, we think there ought to be no problem on the government members' side in saying, as this motion says, that the budget should at the very least indicate how the government is going to achieve the 725,000 jobs and that job creation should be, as we believe needs to be the case, the most important criterion against which the budget is measured.

We didn't see that yesterday in the federal budget. I would have thought that would have been the time for Mr Martin to finally indicate what he was doing. I haven't seen a coherent plan yet on the part of this government, and I would expect, if there's going to be any kind of plan, that this budget coming up would be the time at which Mr Eves would choose to do that. A recommendation that simply says: "You said in the Common Sense Revolution, Mr Harris, that job creation is the most important objective, specifically 725,000 jobs. This motion commits you to it, recommits you to it, and the budget is the time for all of us to hear how you're going to achieve that"—I would certainly urge people to support this recommendation and would find it strange if this was not unanimously agreed to.

Mrs Marland: I don't suppose, Mr Phillips, you would accept any change to your motion? We agree that job creation is an important criterion to be considered when the budget is being prepared, but we don't agree that it's the most important criterion. You probably wouldn't accept an amendment to that, would you?

Mr Phillips: Just give me some words. I think what we're trying to do is to get a series of recommendations that all three parties can support, so what would you like to say?

Mr Kwinter: May I be of some help? I haven't talked to my colleagues, but what about, "Job creation is an

important criterion against which the budget is measured"? Do you have any problem with that, Gerry?

Mr Phillips: No. I think everybody understands that our caucus would say "the most important," but if that's what required to get support—

Ms Lankin: I just indicate that we would support that kind of change. We think it's important, if there's an opportunity, to have recommendations supported by all three parties, so wording that said job creation is an important criterion as opposed to the objection Mrs Marland had to the words "the most important criterion"—I would indicate on behalf of our caucus that we agree with the original wording, but if that's what it takes to get the government caucus to support it, we would be fine in supporting that amendment.

Mr Phillips: We're all set.

Mrs Marland: I'm suggesting that it would be exactly what Mr Kwinter said, that job creation is an important criterion, but we have to take out "against which the budget is measured." We agree with the statement that job creation is an important criterion and, "The new government has committed itself to seeing 725,000 net new jobs created between January 1, 1996, and December 31, 2000." We have to take out "This budget must indicate the plan to achieve this." The difficulty for us is that this is saying "this budget" and we're looking at a five-year period. Also, you will see in our recommendations a recommendation to deal with job creation as well.

Ms Lankin: Is that number 3?

Mrs Marland: That's one of them.

Mr Phillips: Just so I'm clear, you would say, "Job creation is an important criterion against which the budget is measured"?

Mrs Marland: No.

Mr Phillips: So it's just an important criterion. Okay. Then, "The new government has committed itself to seeing 725,000 net new jobs created between January 1, 1996, and"—that's okay.

Mrs Marland: I'm sorry. I'm misleading you. I can't even read my own writing. I didn't take out "against which the budget is measured." I'm sorry.

Mr Phillips: Okay. Good.

Mrs Marland: "Job creation is an important criterion against which the budget is measured." Just a minute. I have to go back to what I said originally: "Job creation is an important criterion." Then, instead of saying "The new government has committed itself," because we know it has, we think it is important to say, "The new government should be committed," because in our CSR we committed, so this is reinforcing. Anyway, I don't think you're probably going to want our—

Mr Silipo: What about amending that to "The government should honour its commitment" taken from your own recommendation?

Mr Kwinter: Again trying to be of some help—

Ms Lankin: Sorry, Mr Chair. Just before Mr Kwinter proceeds, I would like Ms Marland to finish the sentence. I'd like to know what you're prepared to accept in this recommendation and not. You were dealing with the second sentence.

Mrs Marland: In the second sentence we're saying, "The new government should be committed to seeing

725,000 net new jobs created between January 1, 1996, and December 31, 2000."

Ms Lankin: And the last sentence?

Mrs Marland: We can't leave in, "This budget must indicate the plan to achieve this." As I said, the reason we can't do that is because we can't confine this budget. When we're looking at a five-year span, we can't confine this budget to achieve that.

Mr Kwinter: If I could address Mrs Marland's comments, I think to say, "Job creation is an important criterion," period, really doesn't say anything. In what context are we talking about? It would seem to me that if you accept that job creation is an important criterion in formulating a budget, whether you want to measure it against it—that was a criticism of the federal budget yesterday by a lot of parties, saying they didn't address job creation. To just say, "Job creation is an important criterion" to me doesn't say anything. That's a nothing sentence.

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Mrs Marland: I agree.

Mr Kwinter: I haven't finished yet. I just want to help a little further along. You say, "We've already said we're committed to it," so why would you want to fudge those words? What you might want to do that might help you is in the last sentence. Rather than saying, "This budget must indicate the plan," maybe you could say, "This budget should indicate the plan to achieve this," which isn't as onerous. In one it's "must," and this one is "should."

Ms Lankin: I'm seeing some heads nod over there. If there's agreement, I'd like to know what the government members are agreeing to before I start to—

Mrs Marland: I can understand why.

The Chair: Mr Silipo?

Mr Silipo: Maybe, Mr Chair, to sort of bolster more nodding of heads on the other side, could I help the government members along by reading to them some words that will give them some comfort.

"Creating 725,000 jobs is what the Common Sense Revolution is all about." That's on page 3 of the Common Sense Revolution below a chart that shows what they want to do. It starts out: "A Harris government will immediately implement a five-point job creation plan. This plan will generate economic growth and investment in Ontario and create more than 725,000 new jobs."

The commitment is pretty clear. What this motion does is ask people to live up to that commitment and ensure that the budget is measured against that very key commitment. The five-point plan was all aimed at getting the 725,000 new jobs according to the government's promises during the election, not the other way around.

I find it odd even that the government members have difficulty saying, "Job creation is the most important criterion," because their Common Sense Revolution document says exactly that. It says that's really the objective and all the other things are ways to get there. As others have indicated, if the government members are now hesitant to talk about job creation as the most important criterion and can only accept this as "an important criterion," I find it a bit odd, and I want my position very clearly on the record.

I very much prefer the original wording in this motion because I think it does reflect more directly what the government and the Premier have been saying throughout the election and since the election, that creating the 725,000 jobs is what the Common Sense Revolution is all about. If that's what the Common Sense Revolution is all about, in their own words, that should be clearly reflected in the budget, which is going to be their first budget, as they put it. I'm not sure we should even be deviating from that, but if we're going to deviate from that, we shouldn't soften up the expectations any more than that.

Mrs Marland: I don't have my CSR in front of me, but I think we also talk in other parts of the CSR about eliminating the deficit and reducing the debt. I don't know that we said it's the most important criterion, did we? I know it's equal with our deficit reduction and reducing the debt.

Ms Lankin: If it's helpful, Ms Marland, balancing the budget is one part of the five-point plan the CSR sets out to accomplish 725,000 new jobs. The first is to "cut provincial income taxes," which you have set out in your recommendations. The second is to "cut non-priority government spending," which you have set out in your recommendations. The third is to "cut government barriers to job creation, investment and economic growth," which you have set out in your recommendations. The fourth is to "cut the size of government," which you have set out in your recommendations, and the fifth is to "balance the budget," which you have set out in your recommendations.

The only thing you haven't set out in your recommendations is the recommitment or a statement that the Finance minister and the government should be honouring your commitment to the creation of 725,000 jobs. As my colleague Mr Silipo has said, right at the beginning, the first full chapter of the Common Sense Revolution, the first chart, it says, "Creating 725,000 jobs is what the Common Sense Revolution is all about."

It is passing strange that now we have hesitancy on the part of the government members to commit to a recommendation to their government to honour that commitment, to say it is the most important criterion, which in fact in the Common Sense Revolution is set out as the most important goal, and all the other things contained in your recommendations are in the Common Sense Revolution in support of achieving that goal. Quite frankly, if you don't set out a plan, you're not going to get there by the year 2000. That's not to say, Ms Marland, that in your second budget or your third budget or your fourth budget you won't have refinements to the plan, you won't build on the plan, but clearly your first budget has to set out what the plan will be to accomplish that through the years 1996 to 2000 or you will not have any opportunity of achieving those numbers.

I really worry about the backsliding we're seeing on the part of the government members here in terms of committing themselves to what was the key promise in the Common Sense Revolution, which clearly is the thing that most Ontarians are concerned about: the economy and jobs. Clearly, if we want to see the economy turn around, we heard from all the witnesses that consumer confidence is critical. Consumer confidence is only going

to buoyed when there is a sense of security about employment. We would argue, and we will in our recommendations, that some of the elements of the Finance minister's plan tend to undermine that confidence, tend to risk sliding us back into a recession, and that would be harmful to achieving the goals you've set out yourself. I hope that on sober second thought the government members will take a look at the recommendation as it is worded and find that in their heart of hearts it's what they knocked on doors and said and there's no reason they can't support it today.

Ms Castrilli: I wonder if I could be helpful and back up a little. We've started to argue the substance of a revision and we're still not clear what the revision is. I wonder if maybe we could have Mrs Marland read the kind of wording they want and then we could proceed to debate.

Mrs Marland: Thank you, Ms Castrilli. That's very helpful. The opposition is very convincing, so here is the new amendment. We have listened. The recommendation would read as follows:

"Job creation is an important criterion against which the budget is measured. The government should work to see 725,000 new jobs created between July 1, 1995, and December 31, 2000, according to the five-point plan in the Common Sense Revolution."

Ms Castrilli: That's "The government should"?

Mrs Marland: "The government should work"—well, we said "to see" because you had said "committed itself to seeing." I think we should probably say, "The government should work to create 725,000 new jobs between July 1, 1995, and December 31, 2000, according to the five-point plan in the Common Sense Revolution."

Ms Castrilli: You mean 725,000 net new jobs or—

Mrs Marland: Not net.

Ms Castrilli: You're taking out "net"?

Mrs Marland: It doesn't say "net" in the CSR. It says 725,000 new jobs in the CSR.

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Mr Phillips: This one is around jobs, so I just want to make sure the last sentence says, "This budget should indicate how the government plans to achieve this." Or is that what the last sentence is?

Mr Carr: Yes, "according to the five-point plan in the Common Sense Revolution."

Mr Phillips: That prejudices how they're going to do it. The purpose of this one is to focus on the jobs, so I would think we should just leave the wording as it is in my little thing. If you don't like the word "must," just say "should indicate."

Mrs Marland: No. Gerry, my wording is focusing on the jobs. It says, "The government should work to create 725,000 new jobs between July 1"—

Mr Phillips: I see that, yes. It's just the last sentence, which—

Mrs Marland:—"according to the five-point plan in the CSR," which you just confirmed was—

Mr Phillips: Yes, but I think we're going to deal with those later. I think it should simply end by saying, "This budget...." as I've got it here. I don't know what the problem with that is.

Ms Lankin: If we are attempting to find language that all three parties can support, the recommendation on jobs should be a standalone recommendation. Many of the other recommendations of your own that you've put forward indicate the parts of the Common Sense Revolution that are part of that five-point plan. I will not vote for something that recommends the five-point plan, because I don't support your 30% income tax cut, so I think that's problematic for you if you want to see all-party agreement for the recommendation.

Ms Bassett: We were putting it in to make you happy, so let's take it out to make you happy. It doesn't matter to us.

Mr Phillips: That doesn't make me happier, but it's fine.

Ms Lankin: If I may come back in understanding how this will read, "Job creation is an important criterion against which the budget will be measured." Rather than "The new government should create," I would pick up on the wording you have in all your other recommendations, which would be, "The new government should honour its commitment to the creation of 725,000 net new jobs between July 1 and December 31," and then, in terms of what the recommendation is, there should be some plan in the budget to begin to achieve this, or something. I don't know exactly what you were posing in the last sentence there.

The Chair: Are we ready for the question?

Ms Castrilli: I'm not sure what the question is, Mr Chair.

Mrs Marland: Shall I try again?

The Chair: We're going to have another reading.

Mrs Marland: Now, watch this:

"Job creation is an important criterion against which the budget is measured. The government should honour its commitment to create 725,000 new jobs between July 1, 1995, and December 31, 2000."

Ms Lankin: You're uncomfortable with anything in the recommendation that suggests "The budget should reflect this" or should speak to this or should start to set out the plan? I'm not sure what your objection was to the last sentence, or can it remain intact?

Mrs Marland: No. The last sentence is difficult for us, because we don't believe it will only be this budget that will be involved. This is a budget for 1996; it's not a budget for the next five years.

Mr Phillips: In the interest of trying to get something we can all agree on, because we are commenting on recommendations for the budget, I think it's implied that the budget should reflect these recommendations. We would prefer to have that line in, but if this is as far as we can get, I could live without that last line. It is a series of recommendations impacting on the budget, and it is, I think, implied that we will evaluate the budget on the basis of how it's doing against the 725,000.

The Chair: Thank you very much. Are we ready to vote on the amendment to the original recommendation?

Mr Carr: Mr Chairman, on a point of order: We may not get through all of these and we'll only end up with potentially one recommendation. Can we try to move forward and get agreement on 3, 4, 5 and 7 before we vote on them, say, "This one's agreed to" and move on?

What I could see happening is that we'd only end up with one recommendation, that one or whatever. Why don't we do it that way? We'll agree on that when it's all set to go. We'll keep moving forward and see how many we can get.

The Chair: Is the committee in agreement with that process?

Mr Phillips: The only challenge you might have, Mr Chair, is that I think we all know we're in agreement, but we've never actually agreed to it.

Mr Carr: No. What I'm saying is that we wait and vote on all of them together, the four or five recommendations that we can get a consensus on. The reason I'm saying that is that we obviously want to add our recommendations that are going to get to the jobs. I personally—I haven't talked to them—am uncomfortable talking about creating the jobs if we don't get the recommendations. Where we're going to run into problems is that our recommendations to create the jobs, in the whole job creation of the government, the five points, the biggest is the tax cut. We're going to be recommending to the government to create 725,000 jobs, but you won't let us do the tax cut which will create it.

What I'm saying is that we can still maybe agree without the tax cut in there and agree on some other things, but I just am uncomfortable. What you're asking me to do, and I don't know what the other members feel, is agree to create 725,000 jobs, but then you won't agree on how we should do it. That's why that last line, "according to the Common Sense Revolution"—I understand why you don't want that in, but I just don't think we should be agreeing to it unless we can lay out what our plans are to create those jobs, and we may not get the recommendations of all three parties on it.

The Chair: Further comments?

Ms Lankin: Defer the vote.

The Chair: Defer the vote?

Mrs Marland: The reason I support what Gary is saying is that we have a five-point plan and—

Ms Lankin: We've agreed to defer the vote. Can we just get on to the recommendations, or we'll never get through them.

Mrs Marland: I just wanted to respond that obviously our job creation is tied to some other parts of the CSR, that's all, so if we don't get the other parts—okay.

The Chair: The second recommendation.

Mr Phillips: Can I request a favour, that I could go to 4 and then back to 2? I'm trying to get recommendations that I think may get a consensus.

The Chair: Mr Phillips, they're your recommendations. You can do them in any order you want.

Mr Phillips: I really appreciate that. Recommendation 4: I think most members recall that the government appointed the Ontario Financial Review Commission. The Liberal caucus felt it had several important recommendations for the budget preparation. I believe at the time the Minister of Finance indicated general support for it, so recommendation 4 is worded "should incorporate in the budget the budget recommendations." There are other recommendations in this report that go beyond just the budget, I thought very worthwhile recommendations around things like: that the government provide, in its

annual budget, deficit targets for the upcoming and the following two years; that the government provide in its budget a longer-term view of debt reduction targets; that the fiscal forecast be biased towards the cautious end. There were several, I thought, extremely important recommendations, and if they don't get out on the table now with some support from the Legislature, the minister may in the rush of things not incorporate them. That's the purpose of that, and the reason I move to it is because I have a feeling that recommendations 2 and 3 will engender some more debate, but on this one I think we may be able to get all-party agreement.

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Mr Wettlaufer: Gerry, generally we agree with you but, as you know, in any report there may be some segments of that report that you might not want to incorporate. So could we propose an amendment that the government "should consider incorporating," rather than the words "should incorporate"?

Mr Phillips: I don't have a problem with that, in that I can appreciate there may be detail that one in the cold, hard light of dawn one has looked at, but what I take from that is that the general thrust of the committee's report the government members would support, not necessarily our recommendations. So I think that may be useful. I was going to suggest something, "should incorporate the thrust of it," but if you're saying—

Mr Wettlaufer: "Should consider incorporating," instead of "should incorporate."

Mr Phillips: Yes. I have no trouble with that.

The Chair: There's agreement to recommendation number 4, to the amendment of it? Other comments?

Mr Kwinter: Can I just make a suggestion? Again, I haven't had a chance to talk to my colleague about this. I'm a little concerned about the term "consider" because the term "consider" is a very passive kind of a word. You look at it and you say: "Consider it. Well, we considered it. We're not going to do it." I would be a little happier if the government "should attempt to incorporate." It isn't mandatory, but at least it gives them a direction to say, "Here, here's the report; do your best to do this," whereas if you just say, "Would you please consider it," it would just seem to me that it just gives a little bit more direction without binding the government.

Mr Spina: With reference to Monte's point, I'm just wondering, as a rookie, what is the traditional situation? The committee really does put forward some recommendations, but historically it's my understanding that the Finance minister takes all of the recommendations into consideration and will attempt to normally, as a matter of course, implement the recommendations but the Finance minister always has the final say as to what they incorporate or do not incorporate. Is that the case?

Mr Phillips: That is true. In the final analysis, this is advice to the minister and the minister and the government essentially end up doing what they believe. But I think Monte's point is a good one, which is to say the committee is saying to the government, "You should attempt to implement these recommendations," as opposed to, "You should simply consider them as part of the background." So from our side it is I think the intent

of the committee that many of these recommendations—the committee says, "Yes, that's the direction we'd like to head." So if you could accept that, I like Monte's wording a lot better. In the final analysis, if they don't do it we would say, "Why didn't you do it?" and there would be a reason why they didn't do it, and that's the way the game works.

Mr Spina: So you're suggesting the minister could say, "Look, we attempted it but we didn't feel it was viable" for whatever reason.

Mr Kwinter: Yes, exactly.

Ms Lankin: I would say, in response to Mr Spina, in fact your arguments tend to support the original wording that Mr Phillips put forward, because all of our recommendations will be considered by the Finance minister and he will determine one way or another how to deal with them. I point out to you that you're not nearly so cautious in your recommendations where you say the government "should find" the necessary savings, the government "should reduce" personal income tax, the government "should continue to eliminate" red tape, the government "should proceed with its plan to"—your recommendations are all fairly strongly, actively worded, and you know that the minister will consider those recommendations and may or may not adopt those recommendations as part of this budget plan.

Our recommendation says the government should incorporate the recommendations of the Ontario Financial Review Commission. Given that it is your government's commission and report, he will look at it, he will determine one way or the other whether or not he is going to support that. I tend to support the original wording. If you want to go along with Mr Kwinter's recommendation that the government should "attempt to incorporate," I can support that too. But remember, none of us get to write the budget. It's done in another office someplace and these are only recommendations.

Mrs Marland: Does the Minister of Finance write the budget, Frances?

Ms Lankin: Not usually, no.

The Chair: Mr Martiniuk. Gerry. And welcome to the committee, Gerry.

Mr Gerry Martiniuk (Cambridge): Thank you, Mr Chair. I don't want to waste your time because I was not here for your deliberations, unfortunately. I would have preferred to be here, in many ways. My difficulty is that I assume, by using the word "attempt," that this committee has in fact agreed, as a committee, there's a consensus to every recommendation in that report.

Ms Lankin: Dealing with the budget. Those are the only ones that are referred to.

Mr Martiniuk: Because I wasn't here so I assume there was general consensus that every recommendation—and that's why the word "attempt" implies that. Otherwise, you'd have to fall back to "consideration" if you do not have unanimity, I would suggest.

Mrs Marland: We don't have any difficulty with "should attempt to incorporate." Let's just get on with it.

The Chair: Does the mover of the recommendation agree to the amendment?

Mr Phillips: Yes, I do.

The Chair: Shall we move on?

Mrs Marland: So it would read: "The government should attempt to incorporate in the budget recommendations of the government-appointed Ontario Financial Review Commission." Fine.

Ms Bassett: Could I just have it, before we move on—we are in agreement—but let's just read it out to make sure and then—

Mr Carr: Mr Chairman, if I might suggest something: Why don't we have these given to the clerk so that when we're done, as we go through this, including the one we agreed on, have him do them up so we've got in front of us the hard copy? That way we will have it in front of us and can read it rather than going back and forth.

The Chair: When we reconvene this afternoon, you're talking about?

Mr Carr: Yes, if we can get them.

Mr Phillips: What I believe what we have, not voted on, but kind of tentatively agreed, is, "The government should attempt to incorporate in the budget the budget recommendations of the government-appointed Ontario Financial Review Commission." So it's specifically the recommendations around the budget from the—

Mr Spina: The commission is us, though.

Mr Phillips: It was this, the Ontario Financial Review Commission.

Mr Spina: Okay. That's a different story.

Mr Phillips: Do you want me to move on to the next recommendation, Mr Chair?

The Chair: I believe that's the process we're following, I think.

Mr Phillips: Okay, we're back up to number 2 now, which I guess we'll call number 3. I realize the government made many commitments and I think the government recommendations that we've been given use the words "should honour its commitment" several times here. I see three times now where "the government should honour its commitment," "should honour its commitment," "should honour its commitment." To me, during the campaign and since the campaign, probably the commitment that has caused the most debate in the community has been around the commitment on—and these are the words straight out of the government's document—"The plan guarantees full funding for health care, law enforcement and education spending in the classroom."

I've coincidentally used the same language as the government does, "honour these commitments." So it's just doing what the government members have done in several other ones here, in putting in our recommendations the direction to the government to honour its commitments.

Mr Wettlaufer: I think what we'd like to do here is to achieve a consensus. We believe as a government that we must find the savings before we can make the spending. So what we would like to see is an amendment to the wording: "We encourage the government to fulfil its commitment over the term of its mandate to guarantee full funding for health care, law enforcement and education spending in the classroom."

Mr Phillips: The challenge I guess would be whether we are properly reflecting what the commitment was. I wouldn't want to be endorsing a recommendation that's

different than what you promised. So that's the concern we have, because the language tended to be quite specific: total non-priority spending will be reduced by 20% without touching a penny of health care funding; other priorities of law enforcement and classroom funding will also be exempt. So the problem is—I'm not sure I understand your wording—that your recommendation may put us in the position of not following through on the language that you used.

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Mr Wettlaufer: Gerry, what we believe is that our difficulty is not going to be in cutting down the amount of money spent on health care; we believe our major concern is holding the line to \$17.4 billion. We are committed to spending the money, but it's a matter of making sure that in certain areas we can achieve some savings so that we can spend it in other areas. We just feel that we have to achieve the savings first before we make the commitment to spend in other areas.

Mr Phillips: I'm just trying to get an idea. Are you saying you are going to cut classroom spending until you find the savings and then you'll put it back in the classroom?

Mr Wettlaufer: Right now, I was addressing it specifically to the health care issue. To the classroom, we are committed that we are not going to affect classroom spending.

Mr Phillips: We're agreed on that one then.

Mr Wettlaufer: Over the term of the mandate.

Mr Phillips: So you're not going to touch classroom spending, but would it be true on law enforcement?

Mr Wettlaufer: It's fulfilling it over the term of the mandate.

Ms Lankin: Just dealing with classroom education, Mr Wettlaufer, for example: "over the term of the government"? This is very different. I'm reading the Common Sense Revolution, "Classroom funding for education will be guaranteed." It doesn't say anything in there about over the term of the government. It doesn't say anything in there about cutting and then reinvesting in classroom education. It says, "That does not mean that savings cannot be found elsewhere in the education system." So there is nothing in the Common Sense Revolution that proposes a finding of savings in classroom education to reinvest in classroom education over the term of the government. That's not the commitment. I would find it very hard to support what I think is a rewriting of your commitments, a repositioning, some kind of revisionism that's taking place. We want to see that commitment lived up to, along with health care and law enforcement—and, by the way, even though you didn't write it into the Common Sense Revolution, agriculture. Your Premier went out and said it directly to the farmers.

Mr Carr: In keeping with that, I don't have any problem with number 2, but let's expand it and go directly out of the Common Sense Revolution. For those who have it, page 7. We can work this in under health care.

Mr Phillips: Which edition? I've got all the editions.

Mr Carr: The fourth, final printing, with the big picture of Mikey on the front. What it does say, and we can expand it, "As government, we will be aggressive

about rooting out waste, abuse, health card fraud, mismanagement and duplication." Page 7, directly out of the CSR, expands on it, because the health care was expanded. The next paragraph, and you don't want to get it too long, "Every dollar we save by cutting overhead or by bringing in the best new management techniques and thinking, will be reinvested in health care to improve services to patients." And under education, if we can expand that somehow: "Too much money is now being spent on consultants, bureaucrats and administration. Not enough is being invested in students directly." That is word for word directly out of the CSR. So I could agree to your number 2 if we expand it to include the wording exactly out of the CSR of what was meant when we talked about protecting health care and education. It would be unfair to do it in isolation unless you continue on, because then you get a full flavour of exactly what we said we would do.

The law enforcement one, I'm just quickly going to try and grab how we could expand on that. I don't know how we can do that right off the top.

Mr Phillips: I—

The Chair: Excuse me, Mr Phillips. I have Miss Castrilli.

Ms Castrilli: I guess I'm a little concerned with that. It wasn't what I was going to address myself to in the first place, but, you know, I'm looking at the same edition of the CSR that you are and I'm looking at—

Mr Carr: Word for word.

Ms Castrilli: And I'm looking at the letter that is signed by Mike Harris. It's part of the introduction, May 3, 1994, and it says: "This plan guarantees full funding for health care, law enforcement and education spending in the classroom." That's what we've done, that's what we've said. We said, "You should honour that commitment." You're now looking to—

Mr Carr: Expand it to exactly what we said in the CSR, word for word.

Mr Castrilli: You're editorializing. Let me speak to what I was going to respond in the first place, to Mr Wettlaufer. I'm not sure that it's the mandate of this committee to advise the government on all of its mandate. Our job here is to give advice on the budget. That's what we've been doing here. We've been having pre-budget consultation, listening to witnesses, gathering the information and giving our best advice. So I certainly would support us giving advice on the budget. I'm not at all sure that we should be giving advice on the next three or four years of the government's mandate. So on that basis, I would support the wording that is currently there.

Mr Spina: I just wanted to draw the attention to the Sweeney report, which was commissioned by the last government, where Mr Sweeney's commission identified that 47% of education funding was non-classroom-oriented. That is where we feel that any reductions in education would really come, and that is where the changes have to take place in the educational system, not the classroom. If we bring into account what is happening in current days, the problem really lies with the school boards themselves in right now covering their legal liability by giving the notices that they've been giving.

I would suggest—I would, in fact, state that the pupil/teacher ratio is something that is bound by the collective agreement already, so any teacher layoffs cannot impact on that element of the contractual agreement. So that's where the education spending in the classroom is going to have to remain as a commitment because they are not going to be able to back down on that particular legal element.

I would suggest furthermore that a lot of the teachers who have received their notices in the past week are probably going to be hired back once they get the final funding commitment. So I don't think that our commitment to keep classroom funding is going to be impacted, because the cuts can be generated again at the bureaucratic level where 47% of the figures are outside of the classroom at this point.

Mr Silipo: I suggest to Mr Spina that he take a good look at where that 53% is being spent because he will find that a good chunk of that, in fact, is classroom spending. I have a lot of trouble with Mr Sweeney as well as Mr Snobelen in the suggestion that so much money is spent outside of the classroom. You can't run a school without a principal and a vice-principal, for example, and those are two elements not included in Mr Sweeney's calculations, interestingly enough—and many others.

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But that veers from the point I wanted to make, which is that if the point here is to see if there are some recommendations we can agree with, I have a lot of trouble with simply rewriting every conceivable version of how people want to get these things in the Common Sense Revolution back into recommendations.

What we're trying to get here with respect to health care, law enforcement and classroom spending is the basic commitment the government made, reiterating that. The basic commitment, certainly as I read it here, was that under health care, "We will not cut health care spending." Under law enforcement it was, "Funding for law enforcement and justice will be guaranteed." Under education it was, "Classroom funding for education will be guaranteed." In each of those three I'm quoting directly from the Common Sense Revolution.

It's very true that in each of those areas there is language in the Common Sense Revolution that talks about reinvesting dollars. I don't think any of us are trying to pretend that isn't said; that is said. But I would not agree to something that says we're now going to now spell out all the different points that are under that, because some of those are things I'd completely disagree with.

There has got to be a way, if the government members agree, maybe just lifting those words, if that's what they want to do. We'd say that in the area of health care, "The government reiterates its position in this budget that there would be no cuts to health care spending, that funding for law enforcement and justice will be guaranteed, that classroom funding for education will be guaranteed, with the understanding that in each of those areas that would be in part done through savings found within those existing budgets." But the bottom line we're saying is that we want to reiterate through these recommendations

the commitment the government made in the Common Sense Revolution, which was to guarantee funding for each of those areas.

Mr Carr: When you talked about the recommendations, yes, I think we should give the recommendations to the minister, but we also should be giving the recommendations I suggested in there about being aggressive in rooting out the waste, abuse, health card fraud, mismanagement and duplication. That last is the big part, because the savings as a result of hospitals being reduced in the Toronto area will be funding the high-growth areas—we have 25 million in the GTA—so the money is coming back.

I don't know how anybody can argue not recommending to the Minister of Finance that we be aggressive about rooting out waste—I don't think anybody could disagree with that—abuse, health card fraud, mismanagement and duplication. When we make our recommendation about protecting funding for health care, I think we should make a recommendation that is word for word from page 7 of the Common Sense Revolution and include that. I cannot agree to number 2 unless we expand on what we mean about some of the changes, because there will be a shift, funds shifted out of hospitals in the Toronto area, as they close, into long-term care. If you are just saying, "No, don't close any hospitals in Toronto," I can't agree to it. The way the motion reads now, that's what it seems to be saying.

I cannot see how anybody, of any political party, can disagree with the words and the provisions about telling the government to root out—and I'll repeat them again—waste, abuse, health card fraud, mismanagement and duplication. Then we are getting in the entire context of what was said in the Common Sense Revolution: We would protect it but we would do those things. For the life of me, I can't see how any member of any political stripe could be opposed to that.

When it comes to education, the wording we could use—and it could be tightened up a little, however you want. But if you're going to quote from the Common Sense Revolution, quote the parts that are in there as well in talking about what we're going to do. With education, my recommendation would be to say that too much money is being spent on consultants, bureaucrats and administration and not enough is being invested directly in students, because that's why the cuts can be made. We're very clear, if you go through the Common Sense Revolution, on the \$400 million we are taking out in the other sections of it. We said we would take \$400 million out. We said we're going to leave junior kindergarten to the option of trustees. That's the Common Sense Revolution. We said we were going to get rid of the fifth year of high school. We said that in other parts. That's where the money is coming out. We even quote in there the \$350 million of saving that's going to come as a result of that.

When you're going to be quoting from the Common Sense Revolution—and this was given to 2.5 million people. If we're going to do it, I'm saying we should expand it and say exactly what the Common Sense Revolution said. Talking in isolation, I get the feeling that what you're saying—and I may be wrong—is that you're

opposed to any type of restructuring, any type of closing of hospitals in Toronto and any of the shifting of the amounts.

That's what will happen and that's will be done and that's what most members on this side will be supporting. I will tell you very clearly that unless we shift money from some of the Toronto hospitals, which on a per capita basis—I'll give you some of the figures out there right now. Toronto, in terms of funding, gets more funding than the greater Toronto area on a per capita basis.

If we're going to talk about what's going to happen in health care, let's quote from the Common Sense Revolution. If we put those words in there, which I can't see how any member could disagree with, then I could support number 2. If not, I can't. I don't know about the other members.

Mr Phillips: I realize you're fairly emotional about this. Maybe the easy way to do it is to take your own recommendations and say—if I carry your logic to its logical conclusion, your recommendation 1 should then say: "We will do it through reducing waste etc, etc," and you would repeat the Common Sense Revolution after it. What we're all trying to do is to have a series of recommendations, that we don't end up with four or five pages of telling them how to do it. We're essentially saying, "Here's the thrust."

Frankly, Gary, I think I can understand why you're so emotional about it. But each of these recommendations are not designed to be the business plan for how to implement them. If they were, we would never be able to get through any recommendations, because you would say, "We want to eliminate the deficit and we'll do it by this and this and this and this," and we'd be debating the technique of it and the tactics.

I'm just doing what you did. I'm trying to get a series of understandable recommendations isolated. I took one of your own commitments out of the Common Sense Revolution. It was all clearly isolated in one place; I just took that language. I think we're going to get ourselves into difficulty if we try and put about eight paragraphs after each recommendation.

Let's just do what you've done: keep it nice and simple, not say how we're going to do it, but, "Here are the recommendations." Anyway, I guess I'm beating a bit of an unusual horse here, but I am having difficulty with the logic, actually.

Ms Lankin: I think Mr Carr's comments are interesting. I don't know how he can sit there and suggest that a recommendation which simply lifts a quote from Premier Harris's own letter—somehow he extrapolates from that that the opposition is promoting the status quo in terms of public sector services or, particularly in the case of health care, is opposed to health care restructuring. Well, excuse me, Mr Carr. Remember who you're talking to across the table here with respect to very significant work done on the beginning of health care restructuring that needs to take place in this province, and a person who is very committed to seeing a shift in spending from the institutional sector to the community sector, from the illness treatment sector to the illness prevention and health promotion sector. I reject the little

lecture you always seem prone to give when we get into these discussions.

Mr Carr: It wasn't meant that way, Frances.

Ms Lankin: Well, you say it wasn't meant that way. I appreciate that and I repeat that so it's on the record, because anyone who goes back and reads your comments, I would think, would interpret it the same way I did.

1200

I personally don't have a problem looking at wording for a separate recommendation that urges, in the health care sector, for duplication to be ended, waste to be rooted out, health care fraud to be rooted out. I don't have a problem with that. I think that's a standalone recommendation. I think you've actually touched on some of those elements in broader language in your recommendations, not specific to health care but in general in government, and on most of those you'll find that there will be agreement from our caucus.

The real issue that's going on here is that there is a political debate as to whether the government has lived up to its commitments, and the debate centres on whether finding efficiencies and reinvesting them is the same thing as maintaining funding over the term of the government or whether it is a sealed envelope; that in the course of any given year, the health budget reads \$17.3 billion or \$17.4 billion, and as efficiencies are located or found, they're earmarked for reinvestment in other areas. That's the political debate to be had. Surely that is a debate that will continue no matter what the Finance minister says with respect to how you are living up to your commitments. It will be a debate as to whether you are.

The recommendation here simply takes that and makes it clear that there will be guarantees for full funding for health care, law enforcement and education spending in the classroom. I can't imagine your Finance minister not making that commitment in your own political terms, ie, he will say "over the term of our government," because we've heard him say that in answer to questions in the Legislature. We don't believe that was the commitment that was made to the people of Ontario. That's the political point, and we're never going to reach consensus on that in this room, so to start to try and pad it, to start to try and define it, to start to try and put terms to it is absolutely guaranteeing that there will not be a joint recommendation on this point, because we differ about what that commitment meant and how people understood it and what you said when you went to the door.

I've said this many times. I don't believe any of you knocked on the door and said: "We're going to protect health care funding. We're going to seal that envelope over the course of the term of our government, over the course of five years." That's not what I believe you thought the commitment meant, let alone along what you conveyed to the public, and it's certainly not what the public thought. That's the point of political disagreement.

The recommendation itself, to say that the budget should spell out its commitment to the maintaining of funding in these three areas, is surely something we can agree to. We would like to see that spelled out. We will probably find ourselves saying, in the way in which the minister spells it out, that he's not living up to the

commitment, that that's not what was promised in the election. But that's the political dispute. Let's not get into trying to solve that political dispute in the context of this recommendation, because we can't. We have a very different perspective of what that is. So the recommendation is partisan—neutral in that sense. If we all agree that those commitments should be lived up to, we all have a different definition of what the commitment is, and that is the political debate to be had after the minister spells out how he intends to live up to those commitments.

Mr Kwinter: I just wanted to expand on what Ms Lankin had to say. I don't think it's our role to micromanage the economy and to put recommendations to the Minister of Finance as to exactly how he should do it. But this is going to be the first budget of this government. There are commitments that have been made and commitments that are expected by people, and I think we have an obligation to make sure we bring to the attention of the minister that these things should be taken into consideration. I think it's quite benign. We haven't invented language. We've said: "Your plan guarantees full funding for health care, law enforcement and education spending in the classroom. You tell us how you're going to do it." If you're going to redefine that, good luck to you. You take the political chance of doing that.

But if we are trying to give advice on a budget and that budget is going to reflect all the realities of what is happening in Ontario and the commitments that have been made and situations that have been found, I think we have an obligation to at least highlight these things for the minister. He has the option, as I'm sure you know—and the question was asked, "What is the experience?" He will totally ignore this recommendation, which is usually the case. I say that cynically, but that is absolutely the case. If you think this document is going to have any impact, you're living in a dream world. It will be interesting and it will get filed away, as it always does, but the Minister of Finance is doing his thing, and he has every right to do his thing. But we also have a right and we have an obligation to at least put into the record that if you're going to be preparing a budget, let's have a budget that reflects the situation and the commitments that were made. If you choose not to do that, you do that and you have to deal with it. We saw that yesterday. The government has made lots of commitments, particularly, let's say, on GST. They chose to literally ignore it yesterday, and they do that at their political risk. People will say, "Whatever happened to this thing?"

I'm saying I don't think we should be micromanaging the economy and telling the minister how he should do it, but we certainly have an obligation, as the economic and finance committee of the Legislature, to make sure that those elements that could impact on the budget are brought to the attention of the minister, whether it be by deputants who come forward and tell us what they want or by what we bring forward.

These are our recommendations; the government side has theirs; the third party has theirs. We will either come to agreement or not. This particular issue is going to appear, whether it appears in the document as consensus or whether it appears as a minority report. What we're

trying to do is get as much consensus as we can to do it in such a way that it's as uncontroversial as we can. But as I say in my last point, which I've said three times already, we should not be micromanaging the economy in this committee.

The Chair: Thank you very much. The committee stands in recess until 2 o'clock this afternoon.

The committee recessed from 1206 to 1401.

The Chair: As we broke, I believe we had agreed to the wording on—

Ms Bassett: Mr Chair, I'd like to move that since the two Liberal recommendations that are remaining—the one that we broke on, that we were discussing, we have discussed it, we are not going to reach any consensus on that. So I would move that we vote on them and move to the PC recommendations. But in any case, let's move forward on the two Liberals. We're not going to discuss them any more. We won't reach any consensus.

The Chair: Okay. I would like to have a representative from the third party before we have an actual vote. Could we move on and discuss perhaps some of the recommendations of the government? Would you agree?

Ms Castrilli: That would be fine with us. We have no problem with that.

Ms Bassett: It's in the interests of consensus which all members said they wanted to get. It gives us a chance to get to recommendations that we might have a chance to have some agreement on, and we feel we won't on the other recommendations either.

Ms Castrilli: Just for clarification, Mr Chair: Does that mean that we have agreed to recommendations 1 and 4 that we put forward?

The Chair: We have not yet voted on those recommendations.

Ms Castrilli: That's what I'm trying to clarify, that we've agreed to 1 and 4.

Ms Bassett: We have agreed, Ms Castrilli, as amended, to those two recommendations that you put forth, yes.

Ms Castrilli: There is no possibility of consensus on number 2. Is that what you're saying?

Ms Bassett: No, there is not.

Mr Kwinter: Or number 3.

Ms Bassett: Or number 3.

The Chair: Did you wish to vote on 1 and 4 then?

Ms Bassett: Yes.

The Chair: If we could agree then to conduct a vote, can we conduct it as one or do you want two votes on this?

Ms Bassett: I think we can do two votes.

The Chair: Recommendation 1, all those in favour? Agreed.

Recommendation 4, as amended, all those in favour? Agreed.

Mr Phillips: Has Margaret been muzzled?

Mr Chris Stockwell (Etobicoke West): It's a hell of a muzzle if she is.

Ms Lankin: You're actually here. You came because you want to be part of debating number 9, "The government should honour its commitment to eliminate the gold-plated pensions of MPPs." Mr Stockwell, I knew you would come for that debate.

Mr Stockwell: Bingo.

The Chair: I don't think the Chair has recognized you, Ms Lankin.

Ms Lankin: Mr Chair, would you like to recognize me now?

Interjection: It sounds like Ms Lankin.

The Chair: Ms Bassett.

Ms Bassett: I would like to move ahead with our recommendations, and since they've already been read into the record, we will start with recommendation 1 and I shall read it if you want, "The government should honour its commitment to reduce the deficit and balance the budget by the fiscal year 2000-2001."

The Chair: Discussion? Are you ready for the question? Those in favour? Carried.

Ms Bassett: Second recommendation, "The government should find the necessary savings needed to balance the budget."

Mr Kwinter: I have no problem with the thrust of what is going on, but I do have a problem with the implication that there's only one side to the ledger and that the only way you can balance the budget is with savings. If you have increased revenues and if you had the windfalls that Alberta had, you wouldn't have to have any savings. All you would do is balance the budget on those revenues.

I would support this if it was amended to say that the government use its best efforts to stimulate the economy, to grow the economy and, as well, to find savings needed to balance the budget. I just don't think it's a one-sided equation. I think both sides have got to be addressed.

Ms Lankin: I agree with Mr Kwinter's recommendation. Primarily, may I remind government members that there is a great disagreement from our caucus with your proposal to proceed with the 30% income tax cut at this point in time.

I think all of us know and understand that anyone would appreciate getting a tax break—there's nothing wrong with the idea in sort of the abstract—but at this point in time, when it means lower than expected growth in the economy, with lower than expected revenues coming into government, that you're going to have to cut faster and deeper than you had even projected in your Common Sense Revolution, to proceed with a tax cut when we've heard from all the experts who came forward that the stimulative value of that is, at best, questionable, and to continue to hold on to that as the main element of your industrial strategy and your job creation program to achieve your own target of 725,000 jobs when in fact the exact opposite is occurring, when the increase in the amount of cuts you have to accomplish to achieve a balanced budget means that you are going to be laying off thousands more workers than you had even anticipated in the CSR, and that leads inevitably to a continued lack of confidence on the part of consumers—when people aren't at all comfortable about their employment security, they don't go out and buy.

Let me tell you that right now the people who are walking the picket lines as members of OPSEU are not spending. Thousands of young teachers who fear they will be the next to be given a layoff notice are not

spending. Students who are graduating from university who should be going out and buying their first car and investing in the economy are worried that all of the training and education they have been pursuing will be for naught, that there won't be a job for them.

1410

In fact, the pursuit of cuts at the rate at which you are and the depth at which you are pursuing them is really putting us on the edge of slipping back into a recession. We heard that warning clearly from many of the presenters who came before the committee, that there is a real, delicate balance, and this budget is going to have to find that delicate balance.

I'm very concerned about your proposal, which is your next recommendation, to proceed with the reduction in personal income tax as you promised in the Common Sense Revolution. I'm concerned about your recommendation to proceed with that at this time; it ties very much into your second recommendation, that you achieve the necessary savings to balance the budget.

If, for example, you decided to forego the tax cut at this point in time, the savings that you would need to achieve to balance the budget would be dramatically reduced, by about \$28 billion over the course of the term of your government. That's an amazing amount of money that could be there to invest in, certainly, the restoration of some sense of employment security and consumer confidence, as well as maintaining needed social infrastructure.

I'm not arguing for increased expenditures, I'm not arguing for any course, other than to continue to approach the deficit as a significant problem, to reduce the deficit and to achieve your balanced budget. I support those goals. It's the methods by which you get there and it's the balance that you strike in the economy.

The effects of the government's fiscal plan, as we've seen them set out by the Minister of Finance before this committee, as commented on by many of the expert witnesses, really lead me to worry about the fact that your fiscal plan is going to have the exact opposite impact from what you have projected and what you hope for.

The way in which this recommendation is currently stated, which only talks about savings in order to achieve that deficit reduction, and doesn't understand the importance of growth in the economy, of job creation, of that other side to the whole equation and how that affects revenue growth and revenues coming in to the government, is wrong-headed. It gives the wrong emphasis and it doesn't show the balanced approach that I think many of the people who came before this committee argued for.

I wouldn't support the recommendation as it is, only because it's not clear enough and it's not full enough in its intention, and I would support a recommendation that's amended as Mr Kwinter has suggested.

Ms Bassett: We're going to move ahead with the recommendation as is. We're ready for the vote. I'd ask for a recorded vote in this case.

The Chair: A recorded vote for recommendation 2.

Ayes

Bassett, Jim Brown, Carr, Hudak, Martiniuk, Spina, Wettlaufer.

Nays

Castrilli, Kwinter, Lankin, Phillips, Silipo.

The Chair: The motion carries.

Mr Phillips: On a point of order, Mr Chair: I gather we're now into recorded votes and I think we have to go back to the two recommendations of ours that were just sort of dismissed by the government. I don't know whether the NDP would also want to deal with its recommendations or not. The rules I think have changed in terms of procedure here and I wonder if we shouldn't be going back to that.

The Chair: Mr Phillips has proposed that we go back to the Liberal recommendations and vote on 2 and 3 as well.

Ms Bassett: As a recorded vote?

Mr Phillips: Yes.

Ms Bassett: I've no problem with that if you want it on the record.

Mr Phillips: I gather it was unanimous, 1 and 4.

The Chair: Numbers 1 and 4 passed unanimously.

Mr Phillips: Yes.

The Chair: Then all those in favour of the Liberal recommendation 2?

Ayes

Castrilli, Kwinter, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina, Wettlaufer.

The Chair: The motion is defeated.

Recommendation 3 from the Liberal list.

Mr Phillips: Recorded vote again, Mr Chair, please.

Ayes

Castrilli, Kwinter, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina, Wettlaufer.

The Chair: The motion is defeated.

Ms Bassett: Recommendation 3: "The government should reduce personal income taxes to stimulate job creation, investment and consumer confidence."

The Chair: Discussion? A short statement?

Ms Bassett: No.

Mr Kwinter: On a point of order, Mr Chairman: In the interests of saving time, if there are items on your recommendation list that you're not prepared to accept a change to, I think it would help us, rather than get into a huge discussion, to say, "We're going to call the question and that's it." If you think that there's an area where there is room for discussion, then we can discuss it. But to spend our time discussing and you saying, "We're not prepared to change it, so let's call the vote"—I think we'd save ourselves a lot of time. Does that seem like a reasonable suggestion?

Ms Bassett: The only thing, Mr Kwinter, is that we don't really know until we hear what you're going to say.

Mr Kwinter: All right.

Ms Bassett: That's why. If you have something that—

Ms Lankin: I will participate in discussion on this then, but Ms Bassett, for example, on the last point, Mr Kwinter and I both made comments and your response was simply, "We're going to proceed with it as it is." It would be helpful also then, if this is the spirit of cooperation and attempting to arrive at consensus, for you to explain your objection to the points that have been raised or why you are going to continue to proceed. I think that's why Mr Kwinter would have made that suggestion, because on the last example it didn't sound very much like there was a—

Ms Bassett: I stand corrected totally. In defence of myself, I was just trying to get through them because I wanted to get as much input in the areas where we could have discussion. That was the only reason, but I'm happy to discuss more, if you want.

Ms Lankin: I just raised that point because I have no idea why on the last recommendation the government caucus members felt that it was inappropriate to make reference to economic growth and job creation and their impact on government revenues as part of the balanced approach to eliminating the deficit and balancing the budget.

But in any event, we are on recommendation 3, which is, "The government should reduce personal income taxes to stimulate job creation, investment and consumer confidence." Actually, I find the wording interesting here. I note that on this one you're not saying the government should honour its commitment. I'd like to query whether this is an indication that the government caucus is on the Finance minister's side of things, which is to soften the commitment about the 30% tax cut—15% in year one, 7.5%, 7.5%, applied to all Ontarians equally—or whether you're in fact on the Premier's office staff side of it, which is, "No matter what damage it does to the economy, no matter what the harm is, we've got to be out there because we committed to this and we're going to do it." That would be interesting to know. I'm not sure I'll get a clear answer to that kind of query here today.

But let me say first of all that I believe the very premise which underlines this recommendation is faulty, but it is beyond me to understand how the government caucus could interpret the information that was presented before this committee by countless witnesses, even at this moment. Let's just talk about the expert witnesses, including your own expert witnesses. How could you interpret their comments to this committee as supporting statements that the reduction in personal income tax would "stimulate job creation, investment and consumer confidence"? In fact, if you read through the expert witnesses, other than perhaps Ms Croft's statements that she thinks that you need to proceed with it and that it may well have some stimulative effect, by and large the witnesses were very much at odds with the very basic premise behind your recommendation.

We heard much from the expert witnesses that at this point in time the economy is much more fragile than the government's earlier predictions had been or than anyone—not just the government—had predicted; that we're in a—to quote Ms Croft—period of sluggish economic

activity; that there is a significant problem with consumer confidence at this point in time; that that's only exacerbated by the number of potential jobs that will be eliminated through the government's cost-cutting initiatives; and that it will be some time before we see a return to consumer confidence.

1420

We also heard from those witnesses that the tax cut in and of itself wouldn't be a large contributor to increasing consumer confidence. Some pointed to the fact that at the lower end of the income scale, where there may be more of an inclination for the money that is received or saved in terms of the taxpayer by this tax break—that that might be used as disposable income and might end up in the economy quicker. Many believe that that's going to be used up by the cost of increased user fees in many areas that municipal governments and others impose.

At the higher-income end, we heard very clearly that there's a tremendous amount of leakage from this money that will now be out there in the economy; that many would use it to reduce indebtedness; others would put it into savings, investments, many of them not being in the local economy, many of them being in offshore economies. There is absolutely one point of consensus, which is that that tax break, that government revenue that you're giving up, will not come back into the economy dollar for dollar and will not have a dollar-for-dollar stimulative effect.

So I think that there's a real problem with the basic assumptions behind this recommendation. I would point out to you that there were a number of witnesses—again, expert witnesses—who said two things: Make sure you don't jeopardize deficit reduction as a result of proceeding with this tax cut, that if there has to be a priority, the priority is deficit reduction, not the tax cut, at this point in time. That was very clearly stated by witnesses.

The other point of consensus is that all did point to the fact that we do run the risk of slipping into another recession and that you need to think about that carefully as you proceed with the development of recommendations to the Finance minister for this particular budget. If the economy is not strong enough now to withstand the additional cuts to government spending that you will have to take in order to pay for the tax cut and balance the budget at the same time, then you, by your actions, may well be forcing the economy to slide into another recession, which is not going to be good for anybody and is certainly not going to accomplish your plans of a job creation program of 725,000 jobs, which, as we know, is the stated intent of the tax cut.

I urge you to think this one through. There are many other formulations that you might even be able to support. My recommendation would be that the minister should not proceed with a tax cut at this point in time. But you even heard from witnesses who came forward and who argued that you should at least put a contingency approach in the budget which says that if your other fiscal and economic indicators are not achieved, you not proceed with the tax cut. I don't even see that in your recommendations, although many of you seemed to be quite interested in it at the time that we were going through the hearings and you questioned people about it.

I thought that might be an idea that had some salience on the other side of the table here.

I would urge you not to proceed with this recommendation. At the very least—I suspect that you will not support our recommendation, which is not to proceed with the tax cut—perhaps we should remain silent on this, because this is an issue that really speaks to the heart of striking the balance between economic development, sound fiscal management and economic management.

I believe profoundly that if you review the record, even the legislative researcher's record of the presenters, you will see that it was a very, very mixed bag of opinion that came forward, but that it falls very clearly on the side of a cautious approach. To recommend to the minister at this point in time to proceed *holus-bolus* with a 30% income tax cut as was promised, in spite of all of the other variables and all of the other changes in economic conditions, consumer confidence, external to the province even, economic performance in other jurisdictions, which we depend on so much in terms of their inputs to our economy—I urge you at least to drop this recommendation. It is not prudent at this point in time. It is not common sense to recommend that the minister proceed, no matter what, with that particular promise.

The Chair: Ms Bassett?

Ms Bassett: I'm going to defer to Mr Spina at this moment; he wants to speak.

Mr Spina: One of the elements of this particular campaign issue, and one which we feel is so important that it be integrated as part of our overall economic plan, is this: It has been shown that a reduction in taxes has increased tax revenues. The four expert witnesses brought forward, as a matter of fact, by the NDP and the unions—well, the three and the independent economist who came forward—wanted us to look historically. If we look historically, in the 1980s—we have been compared by the opposition to Reaganomics in the 1980s—the reality was that the marginal tax reduction rate implemented by the Reagan government resulted in \$1.1 trillion in additional tax revenue. Now, that tax cut trickled down to produce a 76% jump in new business investment, in real dollars adjusted for inflation in the 1980s, and it tripled the rate of productivity growth. That's historically the fact of what happened in the United States.

Ms Lankin: What happened to the deficit?

Mr Spina: With respect to the deficit, what you had was a Democrat-controlled Congress that stalled all of the expenditure cuts that Reagan wanted to implement, and as a result of not being able to implement the expenditure cuts, they were not able to realize the full benefit of that tax reduction. But the US government realized historic tax revenues. Now, we aren't going to fall into that trap because we have already begun to implement the expenditure cuts, so you can't help but realize the positive impact of a tax reduction.

But I want to take it to the other side of it, and that is that the opposition continually zeros in on one element, and the one element is isolating the tax reduction. The tax reduction is not a single element. It is part of a three-part circle that was clearly outlined in the CSR, and that is, reducing the EHT, the employer health tax, to stimulate jobs in small business; replacing that revenue by

implementing a health care levy to the higher-income earner, which is really a reduction of their tax rate. So the higher-income earners are not going to be realizing the full 30%; they never did. It's the lower-wage earners, \$50,000 and under, who will realize the full benefit of the tax reduction. The opposition themselves have admitted to the fact that it's the lower-income people who, if they did get a tax reduction, would spend it. It would only be the higher-income people who would probably save some and probably spend the other. I'd rather have people who would probably save some and probably spend the other, but they make the decision, not us.

We've taken 11 personal income tax hikes in this province over the past 10 years and it's time we put something back in the taxpayer's pocket. So I move that we adopt this particular recommendation.

Mr Phillips: It's a fundamental debate. Firstly, I have yet to see a study that proves that you reduce taxes and tax revenue goes up. I challenge Mr Spina to table the study that he is purporting to quote, because I have not seen such a study. If that was a study, I will be interested to read it and I will be asking for it later.

But let's recognize what the promise is. You are going to cut \$5 billion of revenue. Well, you see, the problem is—Hansard can't pick up what the members are saying—I'm using your numbers. It is \$5 billion. That is after all three of your tax measures, and if you don't know that, you should know that, because you ran on this platform. So if any of you are going around saying it's \$4 billion, you are misinformed. Your own information shows it's \$5 billion. So if the decision that you're making, Mr Spina, is on the basis that it's \$4 billion, you're wrong—you're simply wrong. And it's not me saying it, it is your own numbers. So if you're saying you're making the decision on the fact that it's a \$4-billion cut, you're wrong. It is after the health tax, it is after removing the employer health provision, it's after the fair share levy—it is your 30% tax cut.

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The second point I'd make to all of you is, every penny of that you are going to have to go and borrow. If you people really believe that it is the deficit, if that's what you really believe, does it make any sense—and you can see here, it's your own numbers—direct fiscal impact of the Common Sense Revolution. I'm doing a Mr Carr here, I'm speaking slowly and pointing to it, but the direct fiscal impact—

Mr Carr: This is for my own reference.

Mr Phillips: Okay, for mine and yours, so you and I understand. And here it is, revenue loss because of the tax cut, \$5 billion.

I say to you, you are not going to balance the budget until the year 2001. I know you all were told that the Conservatives manage the finances really well. I carry around the last time a Conservative government balanced the budget: 1969. I challenge the Premier and the Minister of Finance, because they are not the great money managers you may think. There's the last time a Conservative government balanced the budget. You people will not be around—well, there'll be an election and maybe you'll be around—but this elected government in this term will not be around. You'll never balance the budget.

You won't be around for a balanced budget. You may table a balanced budget, but it will be March 31, 2001, before even you people say it will be balanced.

So I just say to the fiscal conservatives among you, and there probably are several, if this were your business—

Mr Stockwell: Only several of us here?

Mr Phillips: We've had this conversation many times, but think about it: Would you declare a \$5-billion annual dividend if the company is in such tough fiscal straits? You may say, and one of you has often talked about it, "The greatest job creation project in the history of this province is going to be this tax cut." I think you would find economists who would say, "If that's what you want to do, if you want to cut taxes as a job creation exercise, this is probably the least productive tax cut," if that's what it's all about, if that's what you're all about.

We on this side, certainly we in our caucus and, I suspect, the other caucus are just saying to you, if the deficit is such a problem and if you want to get the population of this province, those members of OPSEU who are on strike, the teachers, the hospital workers, the people whom you've already hit on social assistance, all of those people, putting their shoulder to the wheel, I think you lose them, legitimately lose them, when over half of all the cuts that you impose on them go to a tax break. And I think you clearly lose them when over half of that tax break goes to families making more than \$90,000. You truly lose them.

Interjection.

Mr Phillips: Mr Wettlaufer, these are your own numbers, and this is after the fair share health levy.

So I think you're making a fundamental mistake in proceeding with it. I think the money markets will recognize it for what it is, which is a dividend of a company that has no money to dividend. You'll borrow \$20 billion to do this. The taxpayers of this province will pay \$5 billion of interest on that alone. I was interested—the NDP had in its report how much an hour that was, or certainly how much a day it was.

Ms Lankin: Four million dollars a day.

Mr Phillips: Four million dollars a day, the interest on the money you have to borrow for the tax cut. So if you want to live with that, if that is the legacy, if that is the basis on which you want to defend the expenditure cuts, so be it.

I didn't have a chance earlier, Mr Chair, to speak on our motion on the tax cut because it was, I guess, decided it wasn't going to pass, but you can gather from our comments that we feel the focus should be clearly, single-mindedly in the fiscal area on dealing with the deficit and not on taking over half of the money you save and paying it out in the form of a tax cut.

The Chair: Mr Silipo.

Mr Silipo: I think the government members can hide all they want behind the notion that the health levy is going to somehow redress a balance in the tax structure, but the reality is that when they look at the 30% tax cut, they can't escape from the sheer, stark reality that it will, unless they make a substantial change from the promise that was made in the Common Sense Revolution, that the way in which that tax cut will be applied, as we heard

from deputant after deputant, is in a way that will benefit greatly the wealthiest citizens in this province. The numbers are just clearly there. We can argue about small percentages but, on balance, it's quite clear that the top 15% of income earners in this province are going to reap somewhere between 40% and 50% of the benefits of that tax cut. That's not equity as far as I'm concerned.

But, coming more particularly to the point that's raised in this particular recommendation, we also know that the income tax cut is not going to stimulate the economy and create the jobs. That's not just my position or my assertion, that's also what the Minister of Finance indicated to us. He didn't come here and say confidently, "Let's do the tax cut and we will start to see the effects of that." When pressed, he was quite clear in saying that in fact he didn't expect much of an impetus in terms of job creation, certainly for the first year after the cuts, and maybe not even much in the second year after the cuts. You're getting then very close to the last year of the mandate of the government and I think it's fair to ask then, where are the 725,000 jobs going to come from if the tax cut was supposed to be the main factor in getting those jobs created?

So I think it's quite appropriate for us to be flagging that one more time for the government members here, if they want to insist on this position of reducing personal incomes taxes. I understand how much of Mr Harris's own personal credibility rests on this point. It seems to me that he probably would forgo just about every one of his other promises except for this one. That's my own assessment. So I think we will see a 30% tax cut. They might fiddle around with the times, they might even fiddle around with the model of it, although I doubt that, but I think we will likely see it. But what we won't see are the jobs, and that's something that this government is going to have to answer for.

So they can pass the resolutions here. We can see the income tax cut laid out in the budget a couple of months from now but it's not going to generate the jobs, not because I say so but because your Minister of Finance says so.

The Chair: Are you ready for the question?

Ms Bassett: Yes, we are.

Clerk of the Committee (Mr Franco Carrozza): Is it a recorded vote?

Ms Lankin: Recorded.

The Chair: Recorded vote.

Ayes

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina, Wettlaufer.

Nays

Kwinter, Lankin, Phillips, Silipo.

The Chair: The motion carries. Ms Bassett.

Ms Bassett: The next, recommendation number 4: "The government should continue to eliminate red tape and unnecessary regulation and reduce the barriers to investment."

The Chair: Will the member make a short statement? Ready for the question? Shall the motion carry? Those in favour?

The Chair: Carried unanimously. Ms Bassett.

Ms Bassett: I think we want recorded votes on everything, Mr Chair, if that's all right.

Mr Kwinter: If it's unanimous there's no—

Ms Bassett: Oh, you don't? Okay. Sorry. My inexperience.

Mrs Marland: It isn't recorded.

The Chair: Those opposed? There's none opposed.

Mrs Marland: You have to know who's present in the room.

The Chair: I'm sorry, we know that.

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Ms Bassett: Is there a political reason for—we're all in here. There's no one leaving.

Mr Silipo: We'll actually admit that we voted in favour of it.

Ms Bassett: There's no one leaving in order to avoid voting on it. It's unanimous, right?

The Chair: It's unanimous.

Mrs Marland: It could be unanimous with eight people here. That's why we need a recorded vote, and I would ask that it be a recorded vote, Mr Chairman.

Mr Kwinter: May I make a suggestion in the interest of time? The clerk is sitting here, and if it's unanimous, all he has to do is record all the people who are sitting in this room.

Ms Bassett: That's right.

Mrs Marland: That's fine.

The Chair: Thank you, Mr Kwinter.

Ms Bassett: Moving right along—is that all right, Mr Chair?

The Chair: Please, Ms Bassett.

Ms Bassett: Recommendation 5: "The government should proceed with its plan to reduce the employer health tax burden on small and medium-sized businesses, Ontario's largest job creators."

The Chair: Discussion? Shall the motion carry? Those in favour? Those opposed? None being opposed.

Ms Bassett: Number 6: "The government should consider creative initiatives such as providing tax support through crown foundations to assist various sectors in the necessary restructuring."

Mr Phillips: Just a question, I guess. What sort of costs are associated with this?

Ms Bassett: Establishing the crown foundations?

Mr Phillips: Yes.

Ms Bassett: Right now we're in the process, because of yesterday's budget where they brought in many tax initiatives to help charities etc—we're trying to get an exact figure, I don't have it right in front—but not considerable, given the goods that you get in terms of helping out universities and charitable—

Mr Phillips: I'm very supportive of it. I just want to know, because we're quite careful about expenditures, just how much you're asking us to approve in expenditures, just in terms of lost tax revenue, that's all. We have a responsibility—

Ms Bassett: A crown foundation, you will get 100% tax deduction on a major gift.

Mr Phillips: I understand that; the government therefore gets less revenue.

Ms Bassett: Of course.

Mr Phillips: I just want to know how much less revenue the provincial government will get as a result of this. Just to try to be fiscally responsible here before we agree to it, just how much lost revenue does the provincial government anticipate, or do you anticipate the provincial government losing as a result of the recommendation? That's all.

Ms Bassett: We don't have an exact figure because we don't know exactly what the number of gifts is going to be. Universities, they have not very up-to-date figures on what they've been getting in. We've all been reading in the paper since the crown foundations were established in 1992 that some people have given some major gifts. It has loosened up moneys that previously had not been forthcoming. I'm happy to meet with you later; not today because we're in the process of working it out. But if you take, say, a gift of \$250,000, if that was a major gift, that could be written off.

Mr Phillips: I'm very much in favour of the thrust. It's just—

Ms Bassett: You want the total.

Mr Phillips: We're all in a bit of a dilemma here now because we're going to have to put our hands up in about five minutes to vote for or against this. It would be helpful for us to know, does this mean \$50 million less revenue to the province; \$5 million, or \$100,000?

Ms Bassett: I don't know, but I would hope it would be considerable.

Mr Phillips: Considerable less revenue?

Ms Bassett: Considerable gifts, because these are going to hospitals and agencies that are being reduced from the public purse. We're trying to get the private sector to take them over. In effect, it's really money out of one person's pocket into another, out of the government's pocket, being supplied by the private sector. They will get a tax write-off, there's no question, but it's money that normally is not given. I've got studies that I can produce for you about what's happened in the States, that has released a lot of money that people didn't give when this wasn't there. We don't know what's going to happen in the Canadian sector; neither did the federal government when they brought in the cuts yesterday.

Ms Lankin: Obviously, given our support for the establishment of the crown foundations in the first place, we support the thrust of your proposal, but it does feel to me to be a little irresponsible for us to vote on something in which we're not giving any recommendations as to the parameters of this.

There needs to be some balance between incentives you put in place—tax expenditures, essentially, as incentives—in order to encourage donations versus what happens with the revenue base for government for carrying out a number of other large program areas, for example, maintaining health care expenditures at \$17.4 billion, as you promised to do. You need tax revenues to do that.

I think the recommendation should have some limits on it from this committee in terms of the approach, even if they're not dollar limits; in terms of the cautions. We have not had any real discussion about this and we've not had any information presented to us from your caucus

with respect to the background, the detail and the intent behind this.

It's not solely to help various constituent groups deal with restructuring, as you put forward. You're looking for a way to have them supplement their income because government is cutting back what they're funding. That's not necessarily assistance with restructuring.

While I support the intent of what you're proposing—but I don't really agree with the words you've suggested here—I would like to see some background information. Perhaps the government caucus could rethink the recommendation, to put some kind of parameters or context to this. I think it's irresponsible of us not to do that and to recommend this in a full way, which could very significantly undermine government revenues in support of very necessary and important programs that you've committed to maintain budgets for.

Mrs Marland: I must say, I don't understand Mr Phillips's question. You're asking us to give you an estimate on the amount of lost revenue to our government. Correct?

Mr Phillips: Yes.

Mrs Marland: Well, this recommendation isn't talking about lost revenue to the government. It's talking about increased revenue through donations which we wouldn't otherwise have. Because we're doing it through a tax break, it means we're encouraging more money to help support programs which otherwise wouldn't be supported. I don't think you quite heard Ms Bassett's response to you, because that's what she's explaining.

When the former government established crown agencies, it was simply for the purpose of getting a different set of books for a service like the water agency or whichever ones you want to refer to that still carried on the business of the government. We're talking here about getting money, which we wouldn't have had donated otherwise; therefore, it isn't lost revenue. It's actually an advantage to the government.

Ms Lankin: How can you say it's not lost revenue?

Mrs Marland: How do you see it as lost revenue?

Ms Lankin: Presumably, the donations people will provide will be because they will be able to write it off against their incomes and therefore pay less income tax, and therefore it is lost revenue to the Ontario government.

The point we make is that while there is merit in pursuing this, we should have some parameters, we suggest to the government, with respect to this. At a certain point in time you can find that your necessary revenue base to support programs outside those areas to which people might feel compelled or interested in making charitable donations, like the arts, the hospital foundations and universities—but there are other necessary programs, like your commitment to maintain classroom funding in secondary and elementary schools in this province, for which there won't be foundations people will be making charitable donations to, and your ability to do that could potentially be undermined by significant lost revenues. At least you should admit there will be lost revenues, and at least we should be thinking about the context in which this recommendation is going forward and the balance you want to strike. I think that's a

reasonable expectation of background to this kind of recommendation.

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Mr Phillips: It may be worth just a couple of minutes more. Governments of all political stripes often find it politically more expedient to offer tax expenditures than expenditure expenditures, and I'll give you an example. The previous federal Conservative government and the previous provincial NDP government wanted to encourage venture capital funds in small, provincially-based businesses, so they set up something called the labour-sponsored venture capital corporations. It was Mulroney's idea, and the NDP embraced it, but it is a tax expenditure program designed to get funds into small businesses.

That does represent lost revenue to the province of Ontario. All we're saying, certainly on our side, is that in this particular case we're very supportive of it, that it's a good idea and what not, but I do think any government, and certainly we would have expected this government, would have said, "Here's our best cut at the revenue loss as a result of it." There will be a revenue loss to the province. That's the whole idea, that you encourage people to give by offering a tax incentive. By offering a tax incentive, people are giving and saving some tax money—not all the money, obviously, but saving some tax money. There's zero doubt that this recommendation costs the province money. The only question is how much.

Unfortunately, we don't have it; we're going to vote on it. I would just ask the government to perhaps try to do that for us and in the future when we have a recommendation like this, because a tax expenditure represents a hit on the deficit every bit as much as an expenditure expenditure.

Ms Bassett: I hear what you're saying, but I don't see it as a loss to the province, because the money that one pot is maybe giving up is going into another pot. The university foundations, which the NDP government brought in in 1992—the people gave money, so it might not have gone in taxes but it went to fund universities. It's the same kind of thing we are advocating now. In terms of how much it's going to be, that is going to depend on the generosity of Canadians, but there are many great figures coming out of the States, so maybe we will see the shifting of moneys from the private sector to fund hospitals and universities etc, whatever.

The Chair: Are we ready for the question? Shall the motion carry? Those in favour? Those opposed? None being opposed, the motion carries.

Ms Bassett: Next, number 7: "The government should work with the federal government to end regulatory overlap by ensuring that only that level of government best suited to regulate a particular activity does so."

The Chair: Discussion? Are you ready for the question? Shall the motion carry? Those in favour? None being opposed, the motion carries.

Ms Bassett: Number 8: "The government should continue discussions with the federal government with a view to harmonizing Ontario's retail sales tax with the federal goods and services tax, provided that any harmonization of the two taxes does not increase the tax burden on Ontarians."

Ms Lankin: I have a bit of a problem with this recommendation. First of all, we are clearly awaiting the federal government's actions to live up to its commitment in the last election to scrap the GST, so I'm not sure why we would be recommending that the Finance minister of Ontario pursue harmonization with a tax that is going to be eliminated when the federal government lives up to the promise it made. I think we would want, in Ontario, to continue to keep the pressure on the federal government to live up to that commitment. I'm with John Nunziata when it comes to that.

There are very complex issues which your Finance minister has recognized even in pursuing your recommendation as it's currently set out. Presumably, you recognize that harmonization doesn't mean just on the base of the current PST; it means expanding the current PST to include goods currently not taxed provincially to bring them under the rubric of a harmonized GST-PST. You would be introducing new taxes on goods currently not taxed.

I recognize that you put the proviso in that it doesn't increase the tax burden on Ontarians. Good luck. Your current Finance minister has been unable to get any kind of movement from the federal government on a proposal that would end up with no net increase on taxes. There's a real risk of you pursuing a massive tax grab here. I understand the words you put around it, but I think this is quite a dangerous one.

I remind you that you also have a commitment that you all signed in terms of the taxpayers' pledge that you would not be party to the introduction of any new taxes in Ontario, or you're all going to resign or something like that. I don't know what the guarantee was on it.

Harmonization means the introduction of a new provincial sales tax on goods currently not taxed, and I don't know how you can revise history to make that in accordance with your taxpayers' pledge that you will not introduce any new taxes in the province, other than your fair share health levy you committed yourself to. I think you've got a real problem with this. I really recommend that you rethink it. I can indicate to you that we'll certainly be voting against this recommendation.

Mr Silipo: I certainly echo what Ms Lankin has just said and would just add a couple of comments. I find this recommendation a little odd, not the words, but the fact that it's even here. With all my criticism of Mr Eves, this is one issue, so far, where his public pronouncements at least have been clear, which is that he's not interested in harmonizing with the GST, as I've understood his position, exactly because of the dangers set out in this motion, because it does increase the tax burden on Ontarians. I find it a little odd that members of the government side would now want to recommend to the minister that he continue discussions on harmonization, for all the reasons Ms Lankin has outlined.

This is a problem that the federal Liberals took upon themselves to resolve. Let's wait and see what their resolution is. I want to be quite clear. I want nothing to do with any discussions around potential harmonization. There's a promise by the federal government to eliminate the GST. Let them deliver on that promise.

Ms Bassett: We agree with you. We'll withdraw it. The reason it's there, though, is because many people did

recommend it and we are working towards that end—if we could get something that didn't add a huge burden on the taxpayers of Ontario, which has not been forthcoming, as you know.

Ms Lankin: Mr Chair, just procedurally, I believe these motions were all moved this morning, so it's properly on the floor and I think it would take unanimous consent for it to be withdrawn. I don't provide unanimous consent. I think you'll need to proceed to a vote so we can have a recorded vote on this.

The Chair: My understanding is that it does not require unanimous consent to remove a motion.

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Ms Lankin: That's interesting. I'd like to see the rules, and maybe the clerk can inform me later. In most proceedings, once a motion has been moved and is on the floor it is the property of the meeting and needs to be disposed of by a vote or otherwise. It can't be withdrawn just individually. I would think there must be some threshold. If it's not unanimous—

The Chair: Excuse me. That's different from what you initially said. It does not need unanimous consent.

Ms Lankin: Okay. What does it need?

The Chair: I understand it can be removed by the party. It does not require a vote.

Ms Bassett: I was just told that the mover of the motion can withdraw it; since I read it, I can withdraw it.

The Chair: Would the meeting like to hear from the clerk on the subject?

Ms Lankin: It would be helpful. Thanks.

Mrs Marland: If we want to be technical, I read it this morning and I moved it. I'm now withdrawing it.

Clerk of the Committee: If I could explain, once the motion is moved, the same person can withdraw it. What you're concerned about is that if the motion were adopted, it would require unanimous consent because it would become the committee's.

Ms Lankin: Actually, no. I understand that. I'll stand corrected, and I appreciate your clarification. I was of the opinion, from other proceedings and rules of order, that once a motion is placed on the floor it becomes the property of the floor, and you can often agree or whatever to have it withdrawn.

I'm not sure why the government members wouldn't like to proceed with the vote. I would like to see a recorded vote in which we unanimously rejected this recommendation, but if they don't want to be that far on the record, I understand their desire to keep open the political room for the future.

Mr Spina: We are listening, Frances.

Ms Bassett: I'm learning from watching Frances Lankin.

The Chair: The mover of the motion has withdrawn the motion. Do I understand that correctly?

Mrs Marland: Yes, I have withdrawn it.

The Chair: Thank you very much. Ms Bassett?

Ms Bassett: Number 9, do you call it, or is it the new number 8? "The government should honour its commitment to eliminate the gold-plated pensions of MPPs."

Mr Kwinter: I have no problem with the thrust of the motion. I have a problem with what I consider to be

some of the language in it. I suggest something that might be a little more statesmanlike—let me put it that way—that “the government should honour its commitment to address the issue of pensions of MPPs.” To suggest it’s gold-plated is subjective and pejorative. To say you should eliminate it could imply that there should be no pension provisions for MPPs. I suggest that if we say the government made a commitment that it would take a look at pensions and would do something about it—what that is, we don’t know. There was a committee struck; the government has obviously decided it’s not going to honour that recommendation. But it should honour their commitment to address the issue of pensions of MPPs in any way they see fit, and I think that would be a reasonable amendment.

Mrs Marland: Mr Chairman, I moved the motion this morning. I think Mr Kwinter’s wording is far superior to the wording in the motion. Having moved the motion this morning, I’m now going to change the wording to read: “The government should honour its commitment to address the issue of pensions for MPPs.” Thank you for your suggestion, Mr Kwinter.

Mr Kwinter: You’re welcome.

Mr Silipo: I can certainly support that. I was going to make much the same point, that I was prepared to speak strongly against the wording that had been placed originally. We ought not as parliamentarians fall into it just because it’s popularly useful to say MPPs should not have any rights to pensions. If there are issues with respect to the pensions that need to be addressed—I think there are changes that need to be made; I’ve said that publicly and privately in the past. But I don’t think that should prevent there being pensions for MPPs just like there are pension plans for lots of other people who work in the public sector in one way or another. The appropriateness of the pension really is what needs to be dealt with, not whether they should exist.

If there are other ways to address that, that’s fine, but I’m not going to apologize for the fact that as an elected official I’m entitled to a pension plan. If that pension plan is deemed to be too rich, let’s deal with that issue. I hope this is one that, over the course of time, people are able to address in a way that doesn’t get at some of the basic things that I think can drag this down to almost like—well, I’m not sure how to best describe it, but it’s the kind of issue that I’ve seen bring out the worst in politicians, and it bothers me, as somebody who’s spent a number of years in public life.

The Chair: Further debate? The question? Shall the amended motion carry? Those in favour? Those opposed? None being opposed, the motion carries.

Ms Bassett: Moving on: “The government should address the inequities and associated problems of the property tax system in Ontario.”

Mr Silipo: I did a bit of a rah-rah this morning when Ms Marland presented this motion. I just want to be clear that in fact this is intended to do what, among other things, I hope it should do. I’m going to suggest an amendment to this which I hope will meet with approval on the government side, which is to add to the present wording, “including the need to phase out the use of the property tax for education and social services.”

While there are clearly inequities in the way the present system is set up, both on the personal side—the residential side—and the business side, I would be very leery of any attempt to address those problems without addressing the broader issue of the use of the property tax.

I think we heard, even during these presentations, from some of the groups. I remember specifically a reference by the CFIB, the independent business group, to the need to address those issues around the property tax and the use of the property tax for such things as education and social services. It seems to me that’s an issue, a big issue that, I think we can admit, no government to date has managed to address properly. We made some efforts, and I personally wish we had been able to go further than we did. I know there were some attempts when the Liberals were in office. Maybe they can be addressed through this government. If they can, they’ll get lots of support.

The Chair: Debate on the amendment?

Mr Kwinter: I would like to suggest amendments to the main recommendation as opposed to addressing the proposed amendment.

The Chair: As an amendment is on the floor, do we not have to deal with it before we deal with further amendments?

Mr Silipo: Unless you are amending mine.

The Chair: Unless you are amending the amendment, which really gets confusing.

Mr Kwinter: I could amend the amendment.

The Chair: Okay.

Mr Kwinter: I think the original recommendation is subjective and in some cases could be pejorative, depending on where you are and what taxes you pay. I would like to amend the amendment to say, “The government should bring equity and rationality to the property tax system in Ontario,” which doesn’t in any way imply what it is but gives the government a signal that it should deal with the problem because there is inequity and there has to be some rationality so that people feel everybody is being fairly treated.

The Chair: A discussion on the amendment to the amendment?

Mrs Marland: It’s not really amending Mr Silipo’s.

Mr Silipo: It’s amending the first part of it. I’m assuming my part would still be able to follow from that.

The Chair: Including the need to phase out—

Mr Silipo: Yes.

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Mrs Marland: I don’t think Mr Kwinter’s is an amendment to the amendment. However, we would accept Mr Kwinter’s new wording for recommendation 9.

We were going to say to your amendment, Tony, “The government should address the inequities and associated problems of the property tax system in Ontario, including the need to use property tax to fund education,” which means we would address all those aspects, and it may be that in addressing them we would do exactly what Monte is saying. Maybe we’ll eliminate funding other things through property taxes as well. We have to have the option open. I think we would prefer just to accept Mr Kwinter’s motion.

The Chair: Are we ready to vote? We have rather a confusing situation on the floor, which I think I understand. I'll stand corrected if the committee disagrees with me. Could I ask if we could vote on Mr Silipo's amendment first, whether it stands?

Mr Spina: Could you read it or tell us—

The Chair: It dealt with the need to phase out the educational component of the property tax element.

Mr Silipo: "Including the need to phase out the use of the property tax for education and social services."

Mrs Marland: I didn't hear the social services. I'm sorry, I didn't hear that part.

The Chair: Shall the amendment stand? Those in favour of the amendment? Opposed? The amendment is defeated.

Mr Kwinter: would you read your amendment, please.

Mr Kwinter: "The government should bring equity and rationality to the property tax system in Ontario."

The Chair: Those in favour of the amendment? There being none opposed, the motion carries. Shall the motion, as amended, carry?

Ms Bassett: We just voted on it.

Mrs Marland: No, it was actually replaced.

The Chair: I'm sorry, Mrs Marland, we voted on an amendment to it.

Mrs Marland: I know we did. Okay. Then that is now the recommendation. If it helps, I will withdraw the original wording, "The government should address the inequities and associated problems of the property tax system in Ontario." I will withdraw that.

The Chair: It's my opinion that we have not yet voted on the motion; we have only voted on the amendment. We will need another vote on the motion. Shall the amended motion carry? Those in favour? Opposed? Whew.

Ms Bassett: Number 11: "The government should define its core business, restructure to meet the needs identified and focus its resources on them."

The Chair: Discussion?

Mr Kwinter: Quite frankly, I don't understand exactly how you define the "core business" of the province. I have no problem with the government being focussed and make sure it restructures the economy to focus on what it wants to do, but it would seem to me at the very least the province would have "core businesses." There are all kinds of things that go on in the province that government has responsibility for. I just don't know quite what you mean by the core business of the province.

Ms Bassett: I think that's a good point. We're talking about "businesses," I would think. I think that's a typo. It's a typo and it escaped me, I'm sure, because many people don't understand what the government's businesses are at this particular moment, so we have to bring definition to it. That's what we're talking about. I will check that out.

Ms Lankin: Ms Bassett, I don't have a recommendation yet on language. We can work through this, but I do have a significant problem with how this is formulated, not with the intent that government should set priorities and it should accomplish its restructuring in view of those priorities and it should focus its resources on those priorities, but you've taken language straight out of one sec-

tor of the economy and imposed it on government, which is that government should define its core businesses.

Now, we often use that kind of lingo when we talk about government when we're talking shorthand, but let's remember that government's role is much broader than business's. Government's role in our society is multifaceted. It's involved in redistribution of collective resources and the wealth produced from those collective resources, it's involved in protection of individuals and families and groups within society, it's involved in setting up regulatory structures to ensure a civil society, like our justice system. Those are not all easily described as businesses. It is in shorthand, in short lingo, but there are many things that have to do with providing a quality of life in the civil society and meeting the needs of the most vulnerable in our society, which business, quite frankly, is not directly involved in when they consider the bottom line of profit. I worry about an imposition, particularly by your government, of that kind of language, because I think it might mean something different to many of the people in your government than it would as just shorthand language.

I would like to suggest that we should be talking about the government defining the priorities of government in this province, and its restructuring should reflect those priorities and it should focus resources on those priorities. That would make me a lot more comfortable. I think there's lots of room for debate about what those priorities should be, but that language is much more acceptable to me personally than talking about core businesses, which evokes the bottom line profit image.

Ms Bassett: That's fine, Mr Chair. I think that's probably better, Ms Lankin. Let's go with that. That's fine.

The Chair: Could you get me the amended wording, please.

Ms Lankin: Yes. What I have suggested is that the government should define its priorities, restructure—

Ms Bassett: Core priorities, isn't it?

Ms Lankin: Sorry. Core—well—

Interjection.

Ms Lankin: Okay. I'm not sure what the import of that word is in there. It's almost redundant. I mean, priorities are core.

Mrs Marland: It is redundant.

Ms Bassett: It's not redundant, as I see it, because we're focusing in.

Ms Lankin: Priority is the core interest.

Ms Bassett: Oh, I see what you mean.

Ms Lankin: The two words mean the same thing.

Mrs Marland: Yes.

Ms Lankin: What I was suggesting—if you want to let me get it all out and then you can see whether it meets the needs—the government should define its priorities, restructure in light of those priorities and focus its resources on those priorities.

Mrs Marland: Are you going to use the word "business" so you're defining the priorities, though?

Ms Lankin: I was replacing the word "business" with "priorities," because I think my explanation earlier was that talking about core businesses is a shorthand lingo that we often use internally here, but it's not really what government is all about and that I prefer using the word "priorities" than "core business".

Mrs Marland: But the way it stands now, Frances, it could be our priorities in anything. It could be our priorities in social services, our priorities in education.

Ms Lankin: Right.

Mrs Marland: But we're wanting this to refer to business.

Mr Silipo: No, that's not what it says.

Mrs Marland: You don't think so?

Mr Silipo: That's not what it says.

Ms Lankin: That's the problem, you see. I was worried about how this would be interpreted. You're the government and you've got the majority. Your government will decide what its priorities are, presumably in accordance with the commitment on health care, classroom education, law enforcement, eliminating red tape, whatever, but that's your priority as a government. You will set them out. I just prefer that wording than talking about core businesses.

1520

Mr Wettlaufer: I personally have a little bit of difficulty with—

Interjection: Speaking.

Mr Wettlaufer: Speaking.

Mr Silipo: Is it contagious, Ms Bassett?

Ms Bassett: Yes, it is.

Interjections.

Ms Lankin: That's why there's an empty chair on either side of the pair of them.

Mr Wettlaufer: I have a little bit of difficulty with the word "priorities," because "priority" is such a general word. It takes in every facet of everything. I think what we're doing here is talking about a reinvention of government. Governments all around the world are reinventing themselves as to what roles they should actively be involved in. I personally would be much more comfortable with a word such as "activity" or "role," as opposed to "priorities."

Ms Lankin: What about "priority role"? I understand what you're trying to get at and I don't disagree that governments should do it and your priority roles that you identify would be different than ours, perhaps, I just am objecting to the lingo picked out of—

Interjection: The corporateness.

Ms Lankin: The corporateness, thank you, of the lingo.

The Chair: Are we clear on the wording of the motion?

Ms Bassett: Could you read it again?

The Chair: The wording of the motion that I have: "The government should define its priority roles, restructure in light of those priorities and focus its resources on those priorities."

Ms Lankin: Or "on them," whatever.

The Chair: Are we ready for the question?

Mrs Marland: Yes.

The Chair: Shall the motion carry?

Those in favour? Opposed? None being opposed, the motion, as amended, carries.

Ms Bassett: Number 12: "The government should review the regulations of provincially regulated financial institutions to ensure that such regulations do not constitute a barrier to accessing capital by small and medium-

sized financial institutions. The government should also work with the federal government to ensure that federally chartered banks do not restrict access to capital for small and medium-sized businesses."

Ms Lankin: Just a question, Mr Chair: The first part of this recommendation deals with provincial regulations and provincially regulated institutions to ensure that there aren't barriers to accessing capital by small and medium-sized financial institutions. I'm wondering if you meant small and medium-sized businesses, because then you go on to say we should, "work with the federal government to ensure that federally chartered banks do not restrict access to capital for small and medium-sized businesses." If in fact that's what you're talking about—

Ms Bassett: Businesses.

Ms Lankin: It is businesses? Okay.

Ms Bassett: Yes, you picked it right up.

Ms Lankin: Okay. I personally agree with this. There's much work that had been done with the establishment of community investment share corporations and community loan funds and farm plus programs under our government working with credit unions, revisions to the loans and trust and credit unions to make sure that they were able and in a position to be able to provide readier access to capital. I think that's useful.

We also tried to do some work with the federal government and directly with the Canadian Bankers Association around promoting a better understanding of the needs of new industries, particularly knowledge-based industries, the importance of banks starting to understand the demands and how you can't just loan against the old bricks and mortar and capital equipment because that's not what new industry is all about. So a lot of work was being undertaken and I think that should continue.

In particular, there was an initiative in the Ministry of Economic Development and Trade called the wisdom exchange which brought together CEOs from small, innovative growth firms and there were a number of linkages that were being built there between them and the banking communities, which I think should be continued, and although you have thrown out the window the sector partnership program, I would think that some of the work cross-sectoral of bringing groups together with financial institutions should continue.

I don't think Mr Silipo would have any problem with this either. We would support this recommendation.

The Chair: I take the motion as amended. Shall the motion, as amended, carry? Those in favour? Opposed? None being opposed, the motion carries unanimously.

Ms Bassett: Recommendation 13: "The government should request the federal government reduce federal programs to the same degree that the federal government is reducing transfer payments to provinces."

There's a typo in the middle. Take out "to" on the first line.

The Chair: This morning, we also added "that" before the second "the."

Ms Bassett: Okay, that's right. Is that why she put it?

Mrs Marland: Yes, I put in "that"—

Mr Kwinter: Mr Chairman, I don't understand this recommendation. It would seem to me that what you would want to have happen is just the reverse, that if the

federal government was going to reduce transfer payments to the province, you'd want to encourage them not to reduce the programs that are federal programs.

To say to them you want them to reduce federal programs to the same degree that the federal government is reducing transfer payments to the province, then you're saying to the government, "Not only do we want you to reduce the payments to us, but cut your programs as well," so they get a sort of a double hit. I don't understand that.

Mr Martiniuk: I think the intent is clear, Mr Chair, that the federal government has in the past reduced transfer payments to individuals and other governments and yet had retained the same bureaucracy and the same level of waste in Ottawa that they have in the past. If they reduce, for instance, transfer payments to provincial governments by 20%, they should be reducing their bureaucracy by 20%. I think that's the intent of the motion.

Mrs Marland: Then maybe we should say that, instead of "programs."

Mr Phillips: What are the numbers, just so we know what we're voting on? The ones I've actually seen out of the federal government suggest that they've actually cut their own spending far more than they have cut transfer payments. I want to make sure that you've obviously got the numbers there. What are the numbers?

Mr Martiniuk: I do not have them with me.

Mr Phillips: Well, where are they? Are they at your office? The numbers I have show that they've actually reduced their own spending more than transfers.

Mr Martiniuk: Are you including transfers to individuals, or just to institutions?

Mr Phillips: Yes, and to the provinces, but you must have a different set of numbers. What I want to avoid is the embarrassment of us passing this motion, and then them saying, "Well, you obviously didn't even look at our budget, because we've already cut our own"—because I can remember very clearly the words they used, "We are leading, we've cut our own spending more." I think you might recall last night, the budget was—they cut defence another \$400 million or something like that. I don't want us to look foolish on this, and obviously you've got the numbers.

Ms Bassett: I think in light of the fact that we're waiting for the numbers to come in, we should drop it, Mr Phillips. I thank you for pointing that out. We are getting the numbers, but I'd just as soon drop it for now.

Mr Phillips: Okay.

Ms Bassett: Thank you.

The Chair: It was withdrawn? Yes?

Ms Bassett: Yes.

Ms Lankin: I was just wondering, given that the numbers are on their way in, could you share those with us when they do arrive?

Ms Bassett: Yes, Ms Lankin.

Ms Lankin: Okay, thank you.

Mrs Marland: Just to do this technically, I will withdraw the motion that I placed this morning.

The Chair: Thank you, Mrs Marland.

Ms Bassett: That completes it.

The Chair: Shall we move to the recommendations proposed by the third party?

Ms Lankin: Recommendation 1: "The Ontario economy is in danger of slipping into recession. The government should take note of high unemployment and a depressed consumer outlook. Deep spending cuts will make the situation worse by killing jobs and destroying vital public services. Therefore, the government should embark upon a course of balanced deficit reduction to strengthen rather than weaken the province's economy."

Mr Silipo may want to add some comments to this, but I think in general I've set out over the course of the day, in response to a number of other recommendations, our concern that we heard very clearly from a number of the presenters of the weakness of the economy, of the danger of sliding into a recession and of the need for a very delicate balance in both fiscal and economic management to be reflected in this year's budget. That's the intent of our recommendation.

1530

The Chair: Mr Silipo?

Mr Silipo: No, I think that's fine.

The Chair: Further comment?

Ms Bassett: I understand what Ms Lankin is saying. It's just a different philosophical approach and there's no way we could vote for this recommendation.

The Chair: Further debate? Shall the motion carry?

Clerk of the Committee: Is it a recorded vote?

Mr Silipo: A recorded vote, yes.

Ayes

Kwinter, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Hudak, Marland, Martiniuk, Spina, Wettlaufer.

The Chair: The motion is defeated.

Ms Lankin: The second recommendation we'll have to ask you to rule on. It reads as follows:

"The government's promised 30% income tax reduction will not have the hoped for stimulative impact on a fragile economy. The benefits of the tax cut will go primarily to the most wealthy, and there will be a \$28 billion loss of revenue to the province. This is the real explanation for the deep cuts the government is imposing in jobs and services.

"Therefore, the government should abandon its plan to introduce a cut in personal income tax and instead maintain a balanced deficit reduction plan."

In light of recommendation 3 of the government caucus, which was passed earlier, although opposed certainly by our caucus, is this recommendation in order or is it contrary to one that has already been passed?

The Chair: It would be my impression that it would be in order. The previous motion has already passed. Therefore, this motion would be appropriate to be moved at this time.

Ms Lankin: Okay, that's fine. I was trying to observe orders from other proceedings where a motion that was passed—

Mrs Marland: May I speak?

Ms Lankin: You guys interrupt a lot.

The Chair: This is on a point of order, I think.

Mrs Marland: Yes, because you asked a question whether your motion was in order because of a previous motion passed by this committee. I'd like to ask the clerk why he is ruling that it's in order when it's a complete contradiction of the previous motion on the same matter?

The Chair: The clerk didn't rule; I did—technical, perhaps.

In the same manner that a government can make a motion and there can be another motion moved at any time after that motion has been accepted, which completely contradicts it, so too can this committee.

Ms Lankin: This is not a bill.

The Chair: Mr Spina has a comment.

Mr Spina: If this is of any assistance, Mr Chair, there is another motion that was defeated that was tabled. That was the one by the Liberals, and it would seem to me that where you have essentially the same motion or the same thrust of motion and it's been defeated, then it becomes a duplication. I understand your ruling based on the fact that we passed one, but based on one that was defeated that's similar, then I think that's where I would say it's out of order.

The Chair: You're arguing that the motion can be introduced?

Mr Spina: Cannot, because it was already defeated when it was introduced by the Liberals.

The Chair: I can't quote the standing order, but I believe there is a rule such as that in the standing orders. However, there has been business intervening, and given that there's been intervening business, I believe it's appropriate.

Ms Lankin: Thank you very much, Mr Chair. I just wanted to make sure before I launched into a vigorous argument on this recommendation, because with all of the rational and sane and commonsensical arguments I have put forward today, I'm positive I will have convinced the government members to change their minds, unlike earlier when they voted against a similar Liberal motion, and that they will support this motion.

Actually, I don't want to take a lot of time because I believe we know what the end result will be. Let me just quickly, on the record, indicate that this one point of the government's fiscal plan causes us the most serious concern.

We believe that we are currently facing a very fragile economy, that consumer confidence is at a very low point. All of the reports day after day from school boards about thousands of employees receiving their notices; public servants in community after community after community walking the picket line attempting to save their jobs and save public services; young grads who are not able to find work in such times of high unemployment; all of that news feeds into a psychology of low consumer confidence, and that we will not see a turnaround in that over the short term for sure.

There is no evidence the income tax cut is going to aid in a turnaround in consumer confidence. There is no evidence that it will be an aid in attracting investment—quite the contrary. If you have to do the cuts you are proposing to do to pay for the income tax break that you're going to be giving away, you will see a further erosion of community standards and delivery of public

services, social services, health services, all of which are key indicators that help encourage investment to come to our province.

They don't just look at matters such as wage rates and taxes; they look at the health care system, at the stability and security of our neighbourhoods, at the trained workforce. All of those are important factors in attracting investment as well. It will not provide the kind of economic stimulus you are hoping for in terms of the 725,000 jobs, and we heard from expert witness after expert witness.

Our real concern is that to continue down this road you will have to make such huge cuts to the delivery of essential services that really will start to cut at the core and the fabric of our communities in such a way as to continue to undermine the confidence in the economy, the confidence in our communities and move us back into a recession. Surely, I know and you will agree, that is not what your intent is, but all the witnesses who came forward said there's a very real risk of that. This is the central driver to your proceeding down that path. It also puts at risk your ability to meet your fiscal targets with respect to deficit reduction and a balanced budget. It's wrongheaded to proceed at this point in time.

I expect you will vote against this motion, but I wanted to put clearly on the record that our caucus cannot support this direction at this point in time, given the fragility of the economy and given the thousands of people who are going to be laid off and the important services the public of Ontario will lose as a result of this.

Mrs Marland: I wish to be very brief, but actually both recommendations 1 and 2 from the third party could have gone together, because unfortunately, what they are saying is that the third party is opposed to deep spending cuts and opposed to the income tax reduction. So they're actually opposed to everything our government is doing, and that's their privilege. I don't want to get into political rhetoric, but the fact that they were the previous government, obviously, and are not the government now, speaks to the fact that they have a different philosophy, that they have a different approach to managing the province, and they had five years when they had that opportunity.

We are now the government and we feel very strongly that the program that the program this government is on is the program for the solution of the problem.

In recommendation 2, which is what we have on the floor now, when Ms Lankin speaks to the fact that the benefits of the tax cut will go primarily to the most wealthy, I don't know how she knows that because we don't yet know how the tax cuts are going to be done. Then her further statement that there will be a \$28-billion loss of revenue to the province: I don't know how she knows that figure either. We just have to accept that there is an absolute difference in how we want to resolve the problems of the province and increase jobs and services and reduce the deficit.

Obviously, we cannot support their approach. Their approach already has been proven to fail in the last five years.

1540

Mr Martiniuk: I'll make my little speech that I was going to make against the Liberal motion. Business has

learned to compete in the world economy and I believe government has to. By lowering the taxes by the amount in the CSR, we are lowering it to the lowest in Canada and I believe that will attract attention.

We cannot follow the siren cry of what I call the economic isolationists who believe we can build walls around a country and therefore survive. We have such strange bedfellows as the extremists, Mr Buchanan of the United States and Mr Robert White here, who believe they can build a wall around this country. We can't do it. We can't hide from the realities and one of our attractions will be a lower tax rate. I believe that'll create investment and jobs and that's what government's all about.

Mr Silipo: I wasn't going to speak, but I think when Ms Marland, as an experienced parliamentarian, says, "How do we know the benefit of the tax cut is going to go to the richest citizens in the province?" I have to ask myself what it is that she ran on that was different than the rest of the Tory caucus, because it's laid out very clearly in the Common Sense Revolution, which I know Tory members, from time to time, like to quote from, and it's very clearly laid out there.

There are two or three different examples of what it means to you, depending on your income and it's all set out. You're going to get a 30% tax cut and that's where we're taking our information from, and beyond that what the Minister of Finance has been saying and what the Premier has been saying.

Ms Lankin has made some very solid arguments and we've tried throughout these hearings to make some solid arguments about why the 30% tax cut doesn't make sense economically, fiscally, socially, but I don't expect we're going to carry more weight than Mike Harris in these discussions and he's made it abundantly clear that there's going to be a 30% tax cut, no matter what. We just simply wanted to make our position clear again. Ms Marland is right on one thing: We disagree wholeheartedly with the direction this government is taking.

Mr Phillips: Just to comment on the same point, actually the commitment on the tax cut could not have been clearer. It was down to the last dollar. It was like this is not anything that's—it isn't just \$1,700, it's \$1,767, it's \$1,351, it's \$2,540. Our colleague here just said it, it is 46.07% marginal tax rate.

To say that the promise was kind of a generic thing is simply not true. I hate to break the news to you all, but this stuff is out there and there are a lot of people at home working on their old tax returns with this around them. It isn't just going to be, "Well, it was sort of a generic promise." This is down to the dollar. So, Ms Marland, when you say to Ms Lankin, "How can you possibly say that when you don't know what it's going to be?" we've just simply taken at face value what you said in the Common Sense Revolution.

Not prolong the debate, it is a fairly fundamental point. We talked earlier today about the fact that it's \$5 billion a year in revenue. Every single penny of it's borrowed. If we want to be an internationally competitive environment, I would have thought you'd say: "Let's get our fiscal house in order first." Let's not run up another \$20 billion worth of debt over the next four years. Let's not

head into the next election with that added debt on your backs, with \$4 million more a day in interest payments as a result of the money you're borrowing.

We had somewhat the same debate, but the extra point I wanted to make is just that this is not sort of a broad-stroke promise you've made. It's down to the penny on the dollar.

The Chair: Further debate? Are you ready for the question?

Ayes

Kwinter, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina, Wettlaufer.

The Chair: The motion is defeated.

Mr Silipo: I'll move the next recommendation: "The economy requires some stimulative activity as pointed out by all expert witnesses. The proposed tax cut would offer some stimulation, but this would be offset by the slashing of jobs and services needed to pay for its implementation, leading to a general decrease in economic activity."

"Therefore, the government should consider other stimulative tools, such as capital spending and investments in economic development to support growth in jobs and the economy."

This is actually one that I hope could meet with approval on the government side, because if you look at the operative words in the "therefore," what we're talking about is other stimulative tools, such as capital spending and investment in economic development.

We heard from at least a couple that I recall, and I'm sure more presenters, around the need for the government to continue capital spending, whether it's in the area of tourism, whether it's in the area of roads infrastructure, just to cite two examples, as being something that's necessary and it's something that I hope the government members would find would meet with their approval.

Secondly, investments in economic development: We know when you look throughout the world at jurisdiction after jurisdiction, regardless of political stripe, that governments that have been successful in helping to create a climate where jobs are growing are those governments that also take an active role in investing strategically in economic development of a variety of kinds, whether it's in local community initiatives or broader industry-wide initiatives, and there is a direct role for government to play in both attracting and starting businesses and supporting some expansion of businesses through that type of approach.

We're suggesting these as two other tools in addition to what the government clearly believes, the proposed tax cut, is one tool to help create jobs in this province.

Mr Kwinter: I'd like to speak in support of the thrust of the recommendation, but I'd like to offer an amendment. I think there is a major problem this government is going to confront. I was dismayed and shocked when the Minister of Economic Development, Trade and Tourism announced in the House that economic growth cannot be created with government assistance. I sent a letter to the

deputy minister saying, "If that is true, why don't you send everybody home, turn out the lights and save the taxpayers of Ontario one pile of money?"

We have a whole ministry over there that is dedicated to creating economic development. Many of the programs are cancelled and I don't necessarily object to that, but I think there's a role for the government to play. There is a whole range of situations that have happened historically in this province where without government intervention we wouldn't have had them. I can tell you that the Ford Motor Co expansion in Oakville, the Honda plant up in Alliston, the CAMI plant in Ingersoll, the Toyota plant in Cambridge, the salvation of Algoma, the salvation of de Havilland, all of these had a role to play and the government had a major role to play in them.

I understand and, believe me, I'm aware of the problems, that there is only so much money and that there is certainly a philosophy throughout the land that if it can't stand on its own two feet, it should go. But I think that to totally reject that and just act as a cheerleader, to say, "Ontario's open for business and you should come here because look at all the great things that we're doing fiscally, and that's going to make this a great place to invest," I can tell you that businesses are businesses, and when they compete they look for the best deal they can get, and it isn't just the feel-good feeling. They want to know dollars and cents, what does this mean to them, and, "Does it make any economic sense for us to go here when we can go somewhere else?" I think there's a role to play.

1550

So I would suggest that the recommendation be amended to say, in the second paragraph, "Therefore, the government should consider fiscally responsible tools, such as capital spending and investments in economic development to support growth in jobs and the economy." As long as you can afford to do it and as long as you can see the payback and you can see where the spinoffs are going to create jobs for our citizens and economic development for suppliers of various goods and services, then I think the government absolutely has a role. I would encourage the government to support that kind of approach.

Mr Silipo: Mr Chair, I accept that as a friendly amendment.

The Chair: Are there comments?

Ms Bassett: No, we're not going to support this. I hear what you're saying and—

Ms Lankin: Sorry, I didn't hear the rest of your—

Ms Bassett: There's nothing else to say.

Ms Lankin: Could you just enlighten us as to what the objection is? This is not proposing higher expenditures. It's within the context of your budget and all the recommendations you passed that these are things that you should consider.

The Chair: Is there further comment?

Mr Phillips: I wish the government would respond, because I absolutely guarantee, as close as you can, that we all collectively face a huge problem with unemployment. I think we all would acknowledge that, particularly young people. If we don't put our creative juices to work on trying to find solutions to it, if we just say, "We have

one thing only," we've got a problem. What this is suggesting, and my colleague added an amendment that I thought would help you, is, let's get the Ministry of Finance people and the rest of us thinking creatively and aggressively about creative solutions to this, because I assure you—assure us—that the problem is not going away. I frankly think it would be in your own best interests to have this in our report and to be putting the minister's feet to the fire to be looking at some things, some creative things. You may disagree with what was in the federal budget, but at least they had several things where they were trying to tackle youth unemployment and what not. It may not have been much, and may not finally be fully effective, but I would think you would want to be forcing your minister to put the same considerations in.

Mr Spina: As the PA for Economic Development and with due respect to the two previous Economic Development ministers across the floor, I would suggest that a comment you made, Mr Phillips, is a good one, that we should be looking at creative tools to create a positive business investment environment. But I would also suggest to you that, historically, one of the reasons why we put out cash dollars and actual loan guarantees to specific businesses was because we created an environment of taxation and barriers and regulations so that we, in a sense, had to bribe these businesses to come here as a result of those rules, regulations and tax levels. That's the reason why we don't feel we can support this. We would rather go after more creative tools to create that investment environment, as opposed to actually putting out the actual capital spending dollars. We've received within the ministry many comments, both written and verbal, from industry, saying: "Yes, we know that you've cut out corporate welfare," as it's been phrased in terms of grants and subsidies and so forth. "We understand what the government is trying to do. Give us the economic environment in which it's an incentive for us to invest and we'll be there." That's the fundamental message that has been recurring to the minister, and I just wanted to bring that forward.

Ms Lankin: Just briefly, there's nothing in this recommendation that says you should reinstate loan programs. That could be one thing you could do, but that's not what the recommendation says. The recommendation, as it's now written, would suggest that you look at "fiscally responsible tools, such as capital spending and investments in economic development to support growth in jobs and the economy." With respect to capital spending, let me make it very clear to you that you are not going to have an efficient infrastructure in this province that attracts any investment if people can't move their goods to market. If you can't rely on good highways for just-in-time delivery of inventory, you're not going to attract investment; I don't care what your tax rates are. There are certain things that are basic fundamentals. You can define that in any way you want. Like, Highway 407 is going to be important in terms of companies being able to bypass the congested 401 series. Let's take a look at that. That's an important contribution to the competitive atmosphere that you want to create in this province.

With respect to the term "investments in economic development," let me suggest to you that bringing companies together on a sector-wide basis to have them discuss what they face in the economic market that they're involved in, like aerospace—how do you turn around the trend where there has been a decreasing world market and Canada's been having a decreasing share of a decreasing world market? That concept of bringing people together is an investment in economic development, in determining where you're going to go.

The kind of wisdom exchange I talked about, the kind of liaison in bringing together companies with banks to discuss what we need to have in terms of changes to the credit policies of banks, to understand new knowledge-intensive industries, all of those things are creative tools that you can implement in a fiscally responsible way. All it's saying is, don't rely only on your tax cut. You have to look at some of these other tools and include them, not in any way that adds expenditure to your budget; it's in the context of all the recommendations you've already passed. I think to reject this is for you to take a very naïve view of the market and what the market will produce in this province in terms of employment opportunities for people. It really is to say that you will not have any opportunity of coming close to the job targets that you've set and that you don't care.

The Chair: Are we ready for the question? Shall this amended recommendation carry?

Mr Silipo: Recorded vote.

Ayes

Kwinter, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina.

The Chair: The motion is defeated.

Mr Silipo: Mr Chair, with your agreement, I'll just read both of the next recommendations, given the time.

Recommendation 4:

"Consumer confidence, political stability and the overall level of training and health of the population are important considerations for increasing business investment.

"Therefore, the government should keep its campaign promises to protect vital public services, such as health care and classroom education, and restore the damaging cuts that are already causing thousands of layoff notices in schools and hospitals."

Recommendation 5:

"The expenditure cuts announced to date have had the worst impact on the most vulnerable. Women, children, seniors, the poor, sick and disabled have been hit hardest. At the same time, the government's proposed 30% tax cut would benefit disproportionately the most wealthy in Ontario.

"Therefore, the government should take into account its responsibility to all Ontarians in shaping a more balanced program of spending reductions."

Because of the time, I won't elaborate on those. We can proceed to the vote if you wish.

The Chair: Shall we call the question? Shall the motion carry?

Ms Lankin: Recorded vote.

Ayes

Kwinter, Lankin, Phillips, Silipo.

Nays

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina.

The Chair: Recommendations 4 and 5 are defeated. It being 4 o'clock, we have a motion to move.

1600

Ms Bassett: I move that upon final approval by the subcommittee, the report be sent for translation and printing;

That a copy be forwarded to the Minister of Finance at the same time as the report is sent for translation; and

That the Chair table the report when the final printed document is received with the Clerk of the House if the Legislature has not resumed, or in the Legislature if it is sitting when the document is received.

Ms Lankin: I have two procedural questions. First of all, we have voted on a number of recommendations individually and amendments to recommendations and amendments to the report. At some point, there needs to be a motion on the whole report, which I think is a bit different than a motion to report back, so I think we've missed one motion.

Secondly, I would like to inquire as to the procedure with respect to dissenting reports, if you could explain that to me.

The Chair: We should also talk about the form of the report. If we could talk about the form first, perhaps it's more of a procedural thing. In the past, recommendations have appeared in two different forms. The first is that they have been incorporated into the report at the appropriate spot, and the second way it has been done in the past is that the recommendations be listed at the back of the report. Does the committee have any strong feelings as to which way our report should read?

Ms Lankin: Personally, I would like to see the recommendations incorporated in the report as opposed to listed at the end. There can always be a—

The Chair: They would also be listed at the end, under those conditions.

Ms Lankin: Yes, but I'd like to see them in the report.

The Chair: Further comments? Okay. The committee has general agreement on that. I don't think we need a vote.

On the dissenting report, 130(c):

"Every member shall be permitted to indicate in a report that he or she dissents from a particular recommendation or comment within the report. The committee shall permit a member to express the reasons for such dissent within its report."

Mr Kwinter: I don't think anyone was wondering whether we could do it. I think the question was: What is the time frame? How do you want to present it? What is the deadline so that it can get into the report?

Ms Lankin: That's helpful; that was the thrust of my question. I do want to indicate that we will be dissenting

from some of those recommendations and would like to provide our reasons for that in the body of the report as that proceeds. I would just like a sense of the time frame and how we can facilitate communicating with you and the Clerk's office about that.

The Chair: I'm sorry.

Mr Silipo: Time lines. How do we do it?

The Chair: Next Wednesday? Is that reasonable, to have your report in to the Clerk's office?

Ms Lankin: It depends on when we will have a revised version of this report with the recommendations built into the body of it. We'll start working on it—I mean, we won't wait until then—but I'll need to have that in order to be able to provide our dissenting opinion on those recommendations in the right context.

The Chair: Ms Drummond needs Hansard before she can give you that revised copy, and Hansard apparently is running a titch late.

Ms Lankin: What about the end of next week, then? If you can get us the report by the beginning of the week—

The Chair: Alison will speak to it.

Ms Drummond: I can distribute the report probably the day after I see Hansard, but I just need to see Hansard on one of the particular motions.

Ms Lankin: What does that likely mean, Alison?

Ms Drummond: It should be early next week.

Ms Lankin: Early next week? When? Monday or Tuesday?

Ms Drummond: Yes.

Ms Lankin: In that case, I think we could provide our dissenting opinions on the recommendations that we are opposed to by Friday.

The Chair: By Friday, March 15?

Mr Phillips: We kind of expected that our recommendations would be adopted, so we didn't think there would be a need for a dissenting report.

The Chair: Mr Phillips never disappoints.

Mr Phillips: But next Friday is fine.

The Chair: Now we should have a motion to adopt the report as it will be amended.

Ms Bassett: Sorry about this, but upon final approval by the subcommittee, when do we give that?

Interjection.

Ms Bassett: Once we get something back? All right.

The Chair: I understand that the report that we agreed to this morning, as amended, and the recommendations that we have agreed to this morning and this afternoon—

we would like a motion to adopt that report and those recommendations.

Mr Kwinter: Just as long as it's understood that we are going to be voting on that part of the report that we've all agreed to and those recommendations that—well, we can't agree on all the recommendations that were passed, only those that were unanimous.

The Chair: The recommendations that we all agree to.

Mr Kwinter: Otherwise there would be no reason for us to put in a dissenting report, if we are on the record as approving the report.

The Chair: My understanding is that this vote is on all of the motions that carried. You may wish to vote accordingly.

Mr Kwinter: Trust me.

The Chair: I didn't have to point that out, did I? Was that motion moved?

Ms Bassett: I can move that. That's fine.

The Chair: Shall the motion carry?

Ayes

Bassett, Jim Brown, Carr, Hudak, Marland, Martiniuk, Spina.

Nays

Kwinter, Lankin, Phillips, Silipo.

The Chair: Carried.

Mr Phillips: We need your motion to report this now?

Ms Bassett: Yes. It's already been read in.

The Chair: Yes, we need a motion to report to the House.

Mr Phillips: Is that date all right still? I forget the date that you said.

Mr Bassett: Friday the 15th is when you said you'd have your thing ready.

Mr Phillips: Yes. Then when you were reporting them, was there a date?

Ms Bassett: There was no date.

The Chair: It's covered if the House is open, and if it's not open, that's covered in the motion. Shall the motion carry? Those in favour? Opposed? None being opposed, the motion carries.

Ladies and gentlemen, that concludes our business. Let me say what a pleasure it has been to be your loyal servant. I have enjoyed it probably more than I should have. Thank you very much for your cooperation.

The committee adjourned at 1608

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bassett, Isabel (St Andrew-St Patrick PC) for Mr Arnott

Carr, Gary (Oakville South / -Sud PC) for Mr Sampson

Marland, Margaret (Mississauga South / -Sud PC) for Mr Ford

Also taking part / Autres participants et participantes:

Stockwell, Chris (Etobicoke West / -Ouest PC)

Clerk / Greffier: Franco Carrozza

Staff / Personnel: Alison Drummond, research officer, Legislative Research Service



**Legislative Assembly
of Ontario**

First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Thursday 21 November 1996

**Journal
des débats
(Hansard)**

Jeudi 21 novembre 1996

**Standing committee on
finance and economic affairs**

**Comité permanent des finances
et des affaires économiques**

**Pre-budget consultations
Subcommittee report**

**Consultations prébudgétaires
Rapport du sous-comité**



Chair: Ted Chudleigh
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Thursday 21 November 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 21 novembre 1996

The committee met at 1546 in committee room 1.

PRE-BUDGET CONSULTATIONS

SUBCOMMITTEE REPORT

The Chair (Mr Ted Chudleigh): I'd like to call the meeting to order. Welcome back. It's been quite a while since we've had a committee meeting. I'd like to welcome the new members. Mr Pouliot, welcome to our committee.

Mr Gilles Pouliot (Lake Nipigon): Thank you, Mr Chair.

The Chair: I believe all others have been here before. Welcome to Mr Sheehan as a substitute, I believe. You haven't been appointed to this committee; you're a substitute? Welcome.

The agenda in front of us is for the adoption of the subcommittee report on pre-budget consultation review. I believe everyone has been distributed a copy of the subcommittee report. Would someone move the report?

Mr Wayne Wettlaufer (Kitchener): Excuse me, Mr Chair. Are you talking about the pre-budget consultation review?

The Chair: Yes.

Mr Wettlaufer: Mr Chair, the economic statement — it says on page 3 of the report, "The subcommittee stated its intention that if the Minister of Finance was available he be invited to appear." That's not the process that's been in place for all these years. The system that's in place is that the minister would appear for the pre-budget consultations but not for an economic statement. I think we should keep the system in place, the process that is currently in place.

The Chair: For clarification, Mr Wettlaufer, are you suggesting that section B be deleted or be removed or be amended?

Mr Wettlaufer: I'm suggesting that it be removed.

The Chair: So your motion is to approve section A only?

Mr Wettlaufer: No, I'm not even approving section A. Under section A it says, under "Pre-budget Consultation Review, Presenters," "That the Minister of Finance be invited as the first witness, and that his ministry staff also be invited." The process has never had the Minister of Finance for the economic statement. The Minister of Finance only appears for the pre-budget consultations.

The Chair: Are you referring to section A now, or section B?

Mr Wettlaufer: In fact, both.

The Chair: I believe it has been normal — in fact, it's probably imperative — that the Minister of Finance be

invited to the pre-budget consultation review as the first witness, as has been normal over the course of my experience and going back and reading the previous minutes. However —

Mr Wettlaufer: It's not a budget, Chair. It's an economic statement. There is no precedent for it.

The Chair: Part A refers to the pre-budget consultations. Part B refers to the economic statement.

Mr Wettlaufer: That's correct. I'm sorry. It is part B that I'm referring to.

The Chair: So A is okay and you would move the adoption of section A?

Mr Wettlaufer: Yes.

Mr Gerry Phillips (Scarborough-Agincourt): Just to comment, the process around here is quite different now than it was under the NDP, and actually under the previous government as well, in that it used to be that there was an economic statement and it was something like that, basically what's happening with the economy and the sectors and what not. What I think the new government has decided to do is have what it calls a fiscal and economic statement. Certainly that's what the government did last year, as you will recall; it wasn't an economic statement, it was a fiscal and economic statement.

The government has decided — I understand why they do it, and it's quite legitimate — to divide its fiscal package into two: the fiscal and economic statement now, and then the budget. Probably the fiscal statement is almost as important as the budget for this committee in that I gather it's the document, according to the Minister of Finance, where he'll outline the bulk of the expenditure reductions. That used to be done in a budget; now the government's doing it a different way.

For this committee, and I think we all want to be as effective as possible in trying to monitor the finances of the province and provide advice, the fall statement has changed dramatically. If you take the time to go through them, you'd see that the old ones used to be, just as I said, what's going to happen to the GDP and all that sort of stuff. Now the government has detailed fiscal plans in it. For us to do our job, I view that document as almost as important as the budget. It's the key document outlining the government's expenditure plans. I don't think it's out of line to once a year ask the finance minister to come and spend an hour with us on this and then an hour with us on pre-budget, so that over the course of the year we have two hours with the Minister of Finance.

We're all duly elected people, and this committee is designed to be the legislative committee looking at finance and economics. I would find it strange if we didn't feel that we were entitled to invite the Minister of

Finance to spend a total of two hours out of a full year with us. As I say, I view the document that's coming out next week or the following week as almost as important as the budget.

Mr Gerry Martiniuk (Cambridge): On a point of order, Mr Chair: I understand there is not a proper motion before us to adopt the subcommittee report. I don't know what we're debating yet. What did he move?

The Chair: I understand Mr Wettlaufer moved section A of the subcommittee report.

Mr Martiniuk: To adopt section A? Okay. Sorry.

Mr Phillips: Well, I move the whole report.

The Chair: We've got one motion on the floor. We'll have to deal with section B at another time, I suppose.

Mr Pouliot: I fully concur with what my colleague Mr Phillips said. I'm not speaking in terms of political stripes, not from that premise in the least, but surely two hours is most reasonable. I think it's a matter for the person at the helm to come and help us in our deliberations. The committee is exactly within its mandate to expect, I would say, with respect, that the Minister of Finance be here.

Mr Wettlaufer: The economic statement is only an update. That's all it is. There is no sense in changing precedent.

Mr Phillips: I cannot believe the government members want to do this, that you are unwilling to invite the Minister of Finance to come and to explain what will be the most important document. If you want to defend that publicly, I will be surprised. I would think you are here to represent the public. We are a legislative all-party committee designed to hold the finances of this province up to a light. Are you saying to me that the Minister of Finance when he presents this document shouldn't be prepared to spend an hour with us? Is that what you're saying?

Mr Wettlaufer: I'm saying that it's an update on the budget from last year and the minister should be invited to the pre-budget hearings in the spring, as normal.

Mr Phillips: May I recommend that we send a letter to the Minister of Finance and let him make the decision rather than embarrass him by you making the decision for him?

Mr Pouliot: In my opinion, the reality is that this "update" will describe, will highlight, \$3 billion worth of cuts. I don't find those words to be facile when you're talking of this magnitude. It's been mentioned by others, and I don't fully disagree, that what has begun tactically, strategically, is to separate the bad news from the perceived good news that a budget brings. We're not more candid than that.

I like what I hear in terms of, "Let him make a decision." An hour is not unreasonable. I find it most commonsensical. It's the right place to appear for the Minister of Finance. We're not talking about estimates. We're not talking about being overly partisan. When you're talking about \$3 billion, I'm not that consequential that I can see it as a bagatelle, as an afterthought. I think \$3 billion, in this day and age, is something the person on top has to explain. We need his wisdom and his help, and certainly an hour is most reasonable. I can't believe anyone would — oh yes, I do, but I find it difficult that

you want to shelter the minister. He's a grown-up now and he's more than able to defend himself.

Mr Monte Kwinter (Wilson Heights): I'd like to support my colleague's recommendation. This is going to be a significant statement of the fiscal policy of this government. It is not going to be a review of what has happened in the past. It's going to be a look forward. The speculation and the comments that have been made both by the Chairman of Management Board and the government House leader and the Minister of Finance indicate that this is going to be a statement of some significance. I think this committee not only has a right but an obligation to at least take a look at that as part of our pre-budget consultation.

Certainly the material that is going to be included in that statement is going to bear on the budget. The member for Scarborough-Agincourt makes a good point. I think we have an obligation to ask if the minister can appear to answer questions about the document, and he also has the right either to say yes or to say no. I don't think it's this committee's decision to say he should come or he shouldn't come. I can't understand any possible argument to say why he should not come. I can see where he could come up with an argument saying why he won't come or can't come, but I certainly don't think it's this committee's decision to say we don't want him. I can't imagine any committee on economics and finance presented with such a major document that does not want the opportunity to talk to the minister responsible.

I would recommend that we extend that invitation. Hopefully, the minister will comply, but if he doesn't, that's his decision. I don't think we should be making that decision.

Mr Phillips: This is very important to me. We're all elected. One of the roles we perform is to be on an all-party legislative committee. We have a duty and a responsibility. I just say that for the people of Ontario, this fiscal and economic statement is absolutely crucial. I cannot imagine this committee not wanting to have it before us. I can't imagine the government members, frankly, not wanting an opportunity to question the minister on it and to question the officials on it. If you say you sit on the finance and economic committee, I think it's very difficult to explain why the committee hasn't met now since the spring, because this is our key role. I can tell you I feel very, very strongly about this recommendation.

1600

Mr Joseph Spina (Brampton North): It's my understanding that what we're doing here is to set the agenda for the pre-budget consultations, which presumably take place in the spring. Is that the objective of the agenda we are on right now?

The Chair: That's section A of the subcommittee report, "Pre-budget Consultation Review," yes.

Mr Spina: Okay. So I'm having difficulty — pardon my ignorance — in understanding where the problem is, because when we get into pre-budget consultations, whenever, at that time we can get into it. If the minister makes his economic statement or his fiscal statement some time between now and the time this committee begins, that's the prerogative of the finance minister.

Mr Phillips: We had a subcommittee meeting. The members of the subcommittee agreed it was important to look at this fiscal and economic statement. It's absolutely crucial to the future of the province, and that's what you're here for. You're not here to take the orders from the minister. You're here to do the business of the public. I cannot believe what I'm hearing, that the government members are unwilling to have that issue before this committee. If that's what you're telling me, I'd like you to tell me that straight. You do not want an opportunity, shortly after the fiscal and economic statement is presented, to have it come here and to have an opportunity to discuss it. Is that what you're saying?

The Chair: Since this debate is really on section B of this report and the motion before the committee is to pass section A of the subcommittee report, could we do that section and then continue the debate on section B, with the permission of the committee?

Mr Phillips: I view it as a package. I don't know who's given you your marching orders on this, but for the members to not want to have a chance for this committee to discuss that document I think is wrong for the public. It's actually beyond my belief that you would do it. If all we can get is part A, then you can use your clout to do that, but I look across at you and I'll say to you, you're here to serve the public, not to shield the minister.

Mr Frank Sheehan (Lincoln): On a point of order, Chair: All that's been moved is section A. Section B shouldn't even be the subject of discussion.

The Chair: That's correct. There was a suggestion within section A that there be an extension of one week for the submission of invitees, which I believe has agreement. Would that amendment be acceptable to the committee? That's moved from November 21 to November 28 for the submission of the invitees.

Mr Pouliot: That's the three and 35, Mr Chair?

The Chair: Yes. Three lists of 35 and the three expert witnesses as well. With that agreement, all those in favour that I call the question?

All those in favour of section A of the pre-budget consultations review signify by raising your hands? Those opposed? It's unanimous.

Mr Phillips: I move section B.

The Chair: Mr Phillips moves that section B of the subcommittee report be adopted.

Mr Phillips: I assume from the comments that you don't want the minister here and we'll just proceed with the staff. Is that the intention?

Mr Wettlaufer: Yes, that it is the intention. We do not feel it is necessary for the minister to appear. It is an update; it is not a budget. He will appear before the committee. This is what we wish. We would like him to appear before the committee, as is the precedent, in the pre-budget hearings. It is our position that staff is adequate for the economic statement, which is merely an update.

Mr Phillips: I guess we'll deal with each part of it, then. I gather that the government doesn't want point 1, which is that the committee allocate the minister one hour and we'll just deal with the staff on it.

The Chair: Is that correct? Then would we amend?

Mr Sheehan: I move an amendment that we delete section 1 from section B.

No, hang on a minute. You can't amend it. You've got to defeat it if you want to have staff, because all the way through it refers to the minister.

Mr Phillips: No, I don't think so.

The Chair: No, I think we can amend —

Mr Sheehan: If you change administrative staff, that's a substantial change and effectively changes the concept of the motion and you can't amend it or you change the structure. If you change the essence of the motion, you can't do it.

Mr Phillips: I think you're wrong. It says the intent is, if the minister was available he'd be invited to appear, but that the committee nonetheless meet on the first Thursday after the Minister of Finance presents, and that the committee also invite the administrative staff to respond. If he's not available, we move on to points 2 and 3.

The Chair: And so stands the motion. Any comment?

Mr Martiniuk: I'm sorry. Do we have an amendment? There was an amendment moved to remove the requirement on the minister.

The Chair: The amendment was to delete the first point.

Mr Kwinter: Mr Chairman, part B states —

The Chair: Just a minute. I'd like to get the motion straight as to what we're voting on. We're going to give the government just a moment to —

Mr Sheehan: Mr Chair, the first point that the government doesn't want in here is item 1. The second one, though, refers to the minister, as contained in section 1.

Mr Phillips: No, it says after the minister presents to the House.

Mr Sheehan: But the minister is not coming.

The Chair: The minister presents to the House the economic statement.

Mr Sheehan: Good enough. Thank you.

The Chair: Okay. So we have the motion clear, we are voting on "Economic Statement," and the amendment is to delete the first section. That's what we will vote on now, when we're ready, as to whether we agree with the deletion of point 1. Would there be comment on that?

Mr Kwinter: Chairman, I don't understand the problem. There is a very clear indication that this would only be in effect if the minister was available. If the minister indicates he is not available, that's the end of his participation. It doesn't say that this committee insists that the minister come; it says that if he is available, this will happen. It is very simple. If he says, "I'm sorry, gentlemen, ladies, I am not available," that's the end of it. Then everything else falls in order. There's no allotment of an hour to him because he isn't there, but these other things continue to be in place.

So I don't see what is so threatening about this thing, because it isn't in any way compelling the minister to come. He can make his decision. If he says, "Yes, I'll come," or "No, I'm not coming," that's the end of it. I don't see why this committee should be second-guessing him. All part B says is if the minister is available, and it's his decision as to whether he is.

Mr Wettlaufer: The opposition and the third party have ample opportunity to question the minister on the

economic statement in the House. I will restate the government position for the benefit of the opposition and the third party: that the economic statement is an update; it is not a budget.

The Chair: Further comment? Are you ready for the vote?

Mr Phillips: A recorded vote.

The Chair: A recorded vote, and we're voting on the removal of the first section of section B of the subcommittee report, on the economic statement. All those in favour of the removal of that clause?

Ayes

Jim Brown, Ford, Martiniuk, Sheehan, Spina, Wettlaufer.

Nays

Kwinter, Phillips, Pouliot.

The Chair: Now the motion itself, as it stands.

Mr Wettlaufer: It still says, "The subcommittee stated its intention that if the Minister of Finance was available

he be invited to appear." The government side cannot support that.

Mr Phillips: I think we're just voting on 2 and 3 anyway. We just voted on 1. We vote on 2 and 3, which I don't think you have a problem with.

Mr Wettlaufer: We can vote on 2 and 3 if we amend part B to delete —

Mr Phillips: If it just says that the subcommittee meet on the first Thursday after, that's fine with me.

Mr Wettlaufer: "That the committee meet on the first Thursday after the Minister of Finance presents to the House the economic statement," and, "That the committee also invite the Ministry of Finance staff to respond to their questions"?

Mr Phillips: Yes.

The Chair: All those in favour? Unanimous.

Other matters to come before the committee? There being no further business for the committee, the committee stands adjourned.

The committee adjourned at 1613.

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*Mr Gilles Pouliot (Lake Nipigon / Lac-Nipigon ND)
*Mr Joseph Spina (Brampton North / -Nord PC)
*Mr Wayne Wettlaufer (Kitchener PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Frank Sheehan (Lincoln PC) for Mr Hudak

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**Standing committee on
finance and economic affairs**

**Comité permanent des finances
et des affaires économiques**

Economic statement

Déclaration sur l'économie



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LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 FINANCE AND ECONOMIC AFFAIRS**

Thursday 28 November 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DES FINANCES
 ET DES AFFAIRES ÉCONOMIQUES**

Jeudi 28 novembre 1996

The committee met at 1538 in committee room 151.

ECONOMIC STATEMENT

The Chair (Mr Ted Chudleigh): I'd like to call the standing committee on finance and economic affairs to order. To start with, I would like to ask the press to please be aware that there is a committee meeting going on and to go about your business as unobtrusively as you can. Thank you very much for your cooperation. There is an overflow room in committee room 2, which is around the hall to the right as you go out the door. This will be on television and monitors in that location.

The purpose of this meeting is to hear a presentation on Ontario's economic and fiscal outlook from the Minister of Finance. Mr Phillips, did you have a comment?

Mr Gerry Phillips (Scarborough-Agincourt): I wanted to say two things. One is that I am very, very disappointed that we were told that this report would be released at 3:30 and that there was no pre-release. I then find when I get here that the minister had agreed to give the report to a limited number of people at 3 o'clock. I find that unacceptable.

The second thing is that, Minister, you personally promised me that this statement would include the transfer payments. I've now had a moment to look at it, and I don't think you have lived up to that promise you made to me that this was the purpose of this statement.

I just wanted to register those two things, mainly because I'm very angry that some would be given an advance copy of this and the committee was told it would be released at 3:30. We arrive here in good faith, only to find that at least a half an hour ago a whole group of people had the report. I think it's bad manners.

Hon Ernie L. Eves (Deputy Premier, Minister of Finance): First of all, if I could, Mr Chairman, I would like to say to Mr Phillips very directly that the Minister did not agree to anything. The ministry may have agreed, as I understand, to have a media embargo of this document until the committee proceedings started. I share your concern. If that arrangement was in fact made for the media, it should have been made for members of the opposition as well. That is what I have to say about that.

With respect to my commitment, as you put it, to announce transfer payments at the same time, I don't believe I ever said any such thing. There have been some deliberations as to exactly what format this statement would take. I have, if you'd care to look at it, a listing of all economic statements in the province of Ontario since 1983, and I note that when your party was in government, from 1985 until 1990, never once did you have a full economic statement that included transfer payments. So it's very interesting that you should be concerned.

Mr Phillips: I'm sorry, Minister, but when I asked, "When are we getting your fiscal and economic statement?" you looked me in the eye and said: "It is taking longer for me to get the transfer payments finalized. When they're done, we will make the announcement."

Hon Mr Eves: If you will wait until this statement is complete, you will see that in fact there is reference to two sets of transfer payments in the statement itself, so perhaps we should proceed.

Mr Gilles Pouliot (Lake Nipigon): On a point of order, Mr Chair: On the same note, I too came here, responded to the invitation to attend to this committee to which I belong, to which I am appointed, and I expected, as per agenda, an economic statement. In lieu of that, we're presented with a sort of rosy update. I'm sure that the Treasurer and Minister of Finance will agree with me that when we're addressing the transfer partners, they will have to take the hit to the tune of \$3 billion, so it's only just that when you inform people you will also tell them when the hits are going to take place. People have to plan. We're here to listen to you. What plan of action do you have, meticulously, precisely, vis-à-vis the \$3 billion the crown is seeking?

The Chair: We'll get on with that listing in just one moment. The minister will make his presentation. There will then be approximately 30 minutes for questions, for which we will proceed in rotation starting with the opposition party, and there will be 10 minutes for each party to ask those questions.

With that, Mr Minister, I would like to welcome you to the committee. Would you like to proceed, please, with your economic and fiscal outlook.

Hon Mr Eves: I am pleased today to present Ontario's 1996 economic outlook and fiscal review for the information of all members of the Legislature and indeed for all Ontarians. Over the last year and a half, the government has acted to renew the province's economy and get Ontario back to work. Today I am providing a midyear update on what I believe to be the concrete results of those actions, including an economy that is outpacing the cautious budget projection of 1.9% growth for 1996 and is now expected to grow by 2.3% this year.

In addition to this statement, I am releasing a document containing more than 100 pages of additional information focused on Ontario's economic outlook and fiscal position. This information will be useful to Ontarians in understanding, in detail, the economic and fiscal environment in which we will be preparing for the 1997 budget.

Furthermore, I will also be tabling in the Legislature Ontario's 1996 open financial disclosure report, which outlines Ontario's financing activities. As you will recall, last year was the first time this had been done in the

province of Ontario's history, and we are continuing with that tradition.

This information will, I trust, be useful to those wishing to offer advice or ideas to the standing committee on finance and economic affairs, to members of the Legislature or to me directly, as Minister of Finance, on the measures to be included in the 1997 budget. As I indicated when ministry business plans were released last April, we want to hear ideas on how we can become a more efficient, innovative and accountable government. We continue to be open to new and innovative ideas to achieve the objectives we have set as a province.

Our actions taken to date are producing tangible results and our plan is working for Ontarians.

In the Common Sense Revolution and in the throne speech, we described our vision for Ontario and our plan to make that vision a reality. We are removing the obstacles that too much government and red tape have put in the way of people who want to create jobs in Ontario. Obstacles such as high taxes and ballooning deficits threaten our children's future and they choke our economy.

When this government took office, we faced a deficit of \$11.2 billion. This meant that the government was spending \$1 million an hour more than it was taking in in revenue, 24 hours a day, 365 days a year. In the budget, we took the necessary actions and cut the deficit this year to \$8.2 billion. This represents a reduction of some \$3 billion, or 27%. By next year, we will have reduced that deficit figure to \$6.6 billion, a reduction of more than 40%. We will keep on that downward trend until the deficit is eliminated by the end of the fiscal year 2000-01.

So I am pleased to be able to report that the economic and fiscal plan that this government has put in place is on track.

We have overachieved our fiscal target for last year by almost \$600 million.

With improved economic performance, I would expect that we will not need to use the \$650-million reserve fund set aside in the 1996 budget for this year unless some unanticipated risk, such as an economic downturn, occurs to require its use between now and then. That would appear to be unlikely indeed. We need to stay vigilant, however, in our management of the province's budget. Just as last year, with improving economic performance, I fully expect that we will exceed our 1996-97 budget target.

Our five-year balanced budget plan is already producing dividends: 127,000 net new jobs in the province of Ontario since the end of June 1995; improved economic performance, including lower interest rates; lower interest rates compared to the US, due in part to more responsible fiscal policy all across this country of Canada; renewed confidence on the part of consumers and investors; overachievement of fiscal targets and flexibility to make key reinvestments in services of critical importance to all Ontarians.

According to the Conference Board of Canada, consumer confidence in Ontario has risen by 19.2% so far this year.

Nationally, business confidence held steady in the third quarter, with 53% of respondents citing Ontario as the most desirable province for investment.

For example, businesses in Ontario are planning to increase plant and equipment spending by 11.9% in 1996.

Since June 1995, 127,000 net new jobs have been created in Ontario alone. This is close to 60% of all jobs created in the entire country over this period. They were created here in Ontario. Prudent and cautious projections suggest that between 200,000 and 300,000 net new jobs will be created over the next two years. We fully expect that the Ontario economy will again outperform our cautious projections and exceed those levels of job creation.

Lower interest rates are another indicator of domestic and international confidence in the economic and fiscal policies being pursued in this country. The prime lending rate is at its lowest level since 1956. Five-year mortgage rates are at their lowest level since 1965. Ontario's housing resales have increased 24% so far this year. Housing starts are up 21.6% from last year. Both housing resales and housing starts are expected to continue to strengthen over the next few years as stronger job gains, lower mortgage rates and improved consumer and business confidence support an increase in activity.

Providing Ontarians with well-deserved tax relief is a key part of our job creation strategy.

It is leaving more money in Ontarians' pockets now. By leaving more money in Ontarians' pockets now and laying out a real plan to continue to cut taxes, we are restoring confidence about the future. This will encourage people to buy whatever they need or want for themselves and their families.

Lower taxes are also creating the incentives for businesses to invest in Ontario and for entrepreneurs to start up new businesses. For people to take the risks of building or expanding businesses, they need to see the potential reward of their efforts. Our plan for competitive tax rates will make this happen.

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A competitive tax system is also critical to attract those with specialized skills to companies in Ontario. These are the people and the companies that can help Ontario compete throughout the world. Their success means jobs and growth, not just for the companies themselves but for their suppliers and related companies in Ontario and across the country.

On January 1, 1997, Ontarians' take-home pay will go up again as the second stage of the tax cut announced in the 1996 budget comes into effect. Fully half of the promised 30% personal income tax cut will have been delivered as promised. This will mark the second time in six months that Ontario taxpayers will see an increase in their take-home pay. This may be, for most people, the only increase they have seen in their take-home pay in some period of time.

By 1999, we will have reduced Ontario's personal income tax rate by 30.2%. For many with modest incomes, the tax cut will be even larger. Ninety-one percent of all taxpayers will receive a tax cut of 30% or more. With these changes, 10,000 more Ontarians with low incomes will have their income taxes eliminated entirely and more than 1.1 million Ontarians will benefit from the Ontario

tax reduction. The top marginal tax rate in Ontario will be reduced to 49.6 cents on each dollar earned, the second-lowest in Canada.

These changes mean more money for people to spend or invest, more incentives for initiative and growth, and a more competitive tax system — and that means jobs.

Our agenda to create jobs through tax cuts is not limited to cutting personal income taxes. Everyone agrees that payroll taxes kill jobs. We are doing something about it. As of January 1, we will cut the employer health tax for all businesses. This will create jobs. When fully implemented, it will mean that 88% of private sector Ontario employers will no longer have to pay this payroll tax.

This fall, the government kept its commitment to cut the average workers' compensation premium payroll tax by 5%.

However, the federal employment insurance payroll tax is being maintained at a level far higher than is needed to support the benefits it provides and to provide for a future economic downturn. As both the Canadian Federation of Independent Business and the Canadian Chamber of Commerce have stated, there is clearly room for EI premiums to come down from the current \$2.90 rate announced on November 19.

We have ended the tax-and-spend policies of the last decade. Last year's budget contained 10 tax cuts, including the personal income tax cut and the cuts to the employer health tax, among others. We have exempted call centres from retail sales tax. Since the budget, IBM has opened a 1,000-job call centre in North York. S&P Data opened a new 300-job call centre in North Bay. Canada Trust, CIBC Insurance and TD Bank are among others expanding their call centres.

We have also provided a rebate of retail sales tax on building materials, available to Ontario's more than 60,000 farmers by the end of this fiscal year.

We have provided an incentive for first-time home buyers in the province purchasing newly constructed homes, in the form of a rebate of the land transfer tax until the end of March 1997. So far, over 6,000 Ontarians have taken advantage of this benefit and now have the pleasure of owning a new home.

Other tax measures include the introduction of the Ontario film and television tax credit, the cooperative education tax credit, a reduction in the racetrack tax and, by 1999, the elimination of the employer health tax on the self-employed. We have also paralleled a number of federal corporate tax budget measures that result in tax reductions.

In the 1997 budget, I will announce the next steps in implementing the continuing reduction in personal income taxes in the province of Ontario.

Ontario's economy is showing solid progress. In the 1996 budget, we expected real economic growth of 1.9% in 1996. As I indicated earlier, our current outlook is 2.3% growth this year, increasing to 2.9% in 1997 and 3% in 1998.

Lower taxes, more jobs and increased wages will lead to stronger growth in disposable income and consumer spending. In stark contrast to the reductions in real disposable income experienced during the early 1990s, real disposable income is expected to rise by 2.3% in

1997. This should lead to a 2.5% increase in consumer spending.

Investment spending is expected to rise sharply as business confidence is restored. Ontario's machinery and equipment investment is expected to grow by 10% per year, on average, over the 1996-98 period.

Non-residential construction will also expand rapidly, rising at an average annual rate of 6.3% over the same period, a significant turnaround following six years of decline.

Ontario accounts for close to 60% of Canadian manufactured exports. With a much improved competitive position, Ontario exporters are expected to continue to gain market share in foreign markets. Exports are projected to rise by an average of 4.8% over the 1996 to 1998 period.

Export growth has produced a record trade surplus and, in the second quarter of 1996, eliminated Canada's current account deficit. Ontario's strong competitive position has made a major contribution.

Further details on the economic outlook are contained in Ontario's 1996 Economic Outlook and Fiscal Review.

We are implementing changes that will make government work better for the people of Ontario. We will continue our efforts to identify additional savings over the next several months through the budget preparation and ministry planning process. These savings will not only assure achievement of our balanced budget target, they will permit significant and substantial reinvestment in improving health care, education, and other services that Ontarians have told us are priorities for them.

We are working towards completion of the process of finding savings in the government's own operations and programs. These programs are currently being reviewed and decisions will be announced by the responsible ministers following completion of the ministry business planning process, directed by my colleague the Honourable Dave Johnson, Chair of Management Board.

The Who Does What panel, chaired by David Crombie, is expected to release the complete set of its recommendations early in December. The wide-ranging reforms to the organization, management and financing of local services being examined are directed at increasing accountability, eliminating overlap and duplication, improving quality of services and enhancing value for the taxpayers' money.

In my November 1995 fiscal and economic statement, I announced a two-year funding commitment for grants to municipalities. Their transfer payments for 1997-98 are already known. They were announced over a year ago.

For years, education spending in Ontario has been increased without ensuring that money was directed where it was needed most: to educating students in the classroom. The Sweeney report found that as much as 47 cents out of every dollar was being spent outside the classroom. We have made it our priority to focus spending on students in the classroom.

The Minister of Education and Training has already announced a number of measures to improve the quality of education in Ontario's classrooms. We are implementing a demanding curriculum, setting clear standards for students to meet, and using province-wide testing to measure student achievement against those standards.

A new funding model is being designed for our education system to make it fair and more accountable to taxpayers. The minister is also reviewing the issue of school governance, and he will be making a comprehensive announcement on restructuring and funding in the school sector.

The knowledge and skills of Ontario's labour force are a key economic strength of our province and are qualities upon which our program of jobs and growth will build. Our colleges and universities play a critical role in providing the education, skills and research needed in a competitive economy.

The Advisory Panel on Future Directions for Post-secondary Education is studying the future of our post-secondary institutions and is expected to report by December 15. The Minister of Education and Training will announce funding levels for colleges and universities shortly thereafter.

Initiatives introduced in the 1996 budget will continue to assist the post-secondary sector.

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The cooperative education tax credit will help promote co-op programs across the province, providing jobs for some 20,000 co-op students in the province this year. The Ontario student opportunity trust funds will assist qualified students who need support to take advantage of opportunities offered by our post-secondary system. This initiative has been an outstanding success.

Universities and colleges are on track to achieve their targets of raising nearly \$100 million from companies and individuals. The province will match any donations to these trust funds made before March 31, 1997.

I want every person, every patient, and every parent in Ontario to know that this government is committed to funding the health care services we all need. Before we were elected, we promised to keep health care spending at no less than \$17.4 billion. We have kept that promise, we are keeping our promise, and we will continue to keep our promise. In the 1996-97 fiscal year we have allocated \$17.7 billion to health care.

In my November 1995 fiscal and economic statement, I announced a three-year funding envelope for hospitals. They know, and have known since last November 29, what their funding level for not only 1997-98 but indeed 1998-99 will be. Those transfer payments were announced over a year ago — or a year ago exactly, I guess, tomorrow.

We recognize that restructuring to improve the quality of health care will require major reinvestment. We are committed to making the necessary investments. In the coming days and weeks my colleague the Honourable Jim Wilson, Minister of Health, will announce reinvestments in health care in Thunder Bay, Sudbury and other communities across the province.

As part of our commitment to maintaining the health system, we have already made significant new investments. More people of all ages will receive higher levels of care in their homes through the reinvestment of \$170 million into community-based long-term care. An additional 80,000 seniors and people with disabilities will receive services such as nursing, therapy, homemaking and meal programs through this support and reinvestment,

which will also create some 4,400 full-time front-line positions for nurses and other health care providers in communities across this province.

We have increased funding for cardiac care over the next two years to enable cardiac surgeons to perform 1,500, or 19%, more operations than they did in 1995-96.

We have earmarked \$15.5 million for additional training for Ontario's paramedics.

In order to help correct the physician shortages in northern and rural Ontario, we are increasing the funding for northern medical training, funding a rural training program at the University of Western Ontario, and paying higher weekend wages or sessional fees to doctors working in emergency wards in underserved areas, especially in northern and rural Ontario.

We are establishing 30 more examination centres for early detection of breast cancer, through the reinvestment of \$24 million. We are equipping communities across the province with modern diagnostic technology in the form of 23 additional MRI units. We have made 275 new drugs available to seniors and welfare recipients.

We are reinvesting \$23.5 million to enhance community based mental health services, to ensure that services are in place in the community before any more changes are made to inpatient services delivered by psychiatric hospitals.

We are reinvesting \$25 million to expand dialysis services, improve access to care and provide treatment for more patients with chronic kidney failure. Since complications from diabetes are a major cause of kidney failure, we have also introduced programs that raise awareness about diabetes and how to reduce its incidence.

We have also reinvested \$25 million in hospitals, mostly in the greater Toronto area, that are coping with the most intense population pressures in Ontario.

To date, the Minister of Health has made almost 40 major reinvestment announcements, with many more yet to come.

I am confirming today that we will be investing \$6.5 billion next year in Ontario's hospitals, as I announced a year ago, and we are investing \$736 million in our municipalities, as I announced a year ago.

To make decisions in a thoughtful manner, we are consulting with Ontarians through various reviews and panels, including our own business planning process, the Who Does What exercise, and the Smith advisory panel on post-secondary education. The government will not make the decisions on funding levels for schools until after it has received the complete advice of the Who Does What panel, chaired by David Crombie, and we will not be making any decisions on transfers for Ontario colleges and universities until we have received the advice of the Smith Advisory Panel on Future Directions for Postsecondary Education. I would also like to indicate that I would be willing to return to this committee once those announcements have been made by the respective ministers.

It has been a year and a half since the people of this province asked us to restore their vision of Ontario as a place of prosperity and opportunity.

Today, Ontario's economy is regaining strength. Jobs are being created in increasing numbers. Interest rates are

coming down and consumer and business confidence is up. Businesses are adding new employees, purchasing machinery and equipment, and expanding and locating in Ontario. We are meeting our targets towards a balanced budget.

Today, more Ontarians are buying homes, finding new jobs and investing in the future. The people of Ontario want to know that tomorrow will be better than today, for themselves and for their children, and today Ontarians have more reasons to look to that future with confidence and optimism. Thank you, Mr Chairman.

The Chair: Thank you very much, Mr Minister. We'll now move to questions. We'll have 10 minutes from each caucus. We'll begin with you, Mr Phillips.

Mr Phillips: This was an interesting chamber of commerce speech. I think it probably was literally a blue cover put on something that was delivered to the chamber of commerce.

Minister, it was you, really, who raised the expectations of what we were going to be dealing with. I think you've said to every reporter at Queen's Park, certainly to me, that it was your intention to identify the \$3 billion in cuts that were going to be necessary. You've used that number with the public. The public is anxious and the public is worried. In particular, those organizations that are going to be directly impacted are worried: the school boards, the colleges, the universities, all of those organizations.

We appreciate the speech, but it is not what you promised. You said to me — I will say it again — that the reason you were delaying your statement was because you were wrestling with the \$3 billion, wrestling with the cuts.

My question to you is: Is it still \$3 billion? Why are we waiting for you to come forward with the details? It is causing anxiety out there. And why did you indicate to us that you thought you would be ready in the middle of November, then towards the end of November, and then early December, and suddenly, 24 hours ago, you've completely changed your mind and we don't have the statement dealing with it; we've got the chamber of commerce speech?

Hon Mr Eves: I would like to address the points made by Mr Phillips very directly. What he refers to as a chamber of commerce speech is the same sort of document that has been produced in the province of Ontario in the fall for many, many years, including by every Treasurer in his government between 1985 and 1990. Having said that, they are typically exactly the same thing that Mr Martin delivered in Ottawa approximately a month ago. They are, generally speaking, in-year statements providing the province, or in his case the country, with an update as to where they are in-year with respect to their projections. That's what they've always been. The only big exceptions to that rule were, of course, my statement of last November, when there had not been a budget in the province of Ontario for about a year and a half and therefore we felt the need to have an economic statement.

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I want to address very directly the point you make about the \$3-billion announcement and the expectations

of not only yourself but, I would quite readily agree, a lot of people, not only in the media but throughout the province of Ontario. It was our expectation that we would be ready to deliver on that announcement by this time, but the more and more we got into the exercise, the more and more we realized that certain aspects of that would not be able to be fulfilled by the end of November.

The Who Does What panel will not be reporting till early in December. There is no exact fixed date that I know of. Of course, implicitly tied into that is the entire issue of school governance and funding, so we do not feel at this point in time that the Minister of Education or myself or anyone else in our government is able to tell the province what we plan to do with respect to education funding.

Similarly with respect to colleges and universities, the post-secondary education sector, the Smith advisory panel is not expected to report back until the middle of December. Therefore, we're not able, obviously, to tell you, until that panel has reported back to the minister, exactly what the funding levels will be for colleges and universities for the next fiscal year.

But with respect to transfer payments, as I pointed out in my statement, the municipal sector was told on November 29, 1995, not only what their transfer payments would be for this current fiscal year but what the total sum will be — \$736 million — for the 1997-98 fiscal year, which is next year. They were told that a year in advance and some 15 months before that fiscal year starts. I believe that's the first time ever in the history of the province that that's been done. We gave them a two-year lead time. With respect to hospitals, we gave them a three-year lead time on November 29, 1995.

While I do appreciate the comments that you make with respect to the \$3-billion figure, as I've stated in my statement there will be announcements forthcoming from those ministers when they're able to have made those decisions and they have those figures available to announce.

I can assure that that will be done in short order, but I can also assure you that it won't be done without some serious consideration and thought to the recommendations of the Who Does What panel report submitted by Mr Crombie early next month and by the Smith advisory panel submitted by approximately the middle of December.

Mr Phillips: Why don't you just say that? Why don't you just say, "Listen, I'm sorry, I was wrong; we can't get it done," instead of trying to put smoke and mirrors around this thing today? The fact is you are going to have cut \$3 billion. You don't know where you're cutting it, and I think the public has a right to demand of you, how did you determine that you could cut \$3 billion if you have no idea where you're going to find it?

Hon Mr Eves: I didn't say we have no idea where we're going to find it. Those are your words. I think I've been very forthright in explaining to you how we've come to where we're at today. I think I've just said exactly what you got through repeating.

It is traditional for treasurers in this province, the ministers of finance, to produce an in-year economic outlook and —

Mr Phillips: But that isn't what you promised.

Hon Mr Eves: Now you say that it's not —

Mr Phillips: No, no, what you promised — not what was done before but what you personally promised. It's your word.

The Chair: It might work better if you'd let him answer the question.

Hon Mr Eves: I've already explained how we got to where we are today and why I cannot tell you the \$3-billion reductions and why individual ministers will make their announcements as they are able to thoughtfully think through the process in their particular sectors as to where the reductions are going to be found. I've said it three times today. I don't know why you can't accept that as an explanation —

Mr Phillips: What I can't accept is your telling me one thing and doing something different.

Hon Mr Eves: — unless you want to score political points, of course, but that's up to you. I think there's a lot of good economic information and news in here. Maybe you don't want to hear about good news in the province of Ontario. Maybe you didn't want those 127,000 new jobs —

Mr Phillips: What I want here is what you promised.

Hon Mr Eves: — in the last 15 months. I've explained to you why I am not able to deliver on that today. I think I've been very forthright about it. In fact, I was very forthright about it with you on the telephone yesterday —

Mr Phillips: Oh, hold on there.

Hon Mr Eves: — so for you to show up here today and grandstand is somewhat ridiculous, quite frankly, but you've scored the political points you wanted to score.

Mr Phillips: The second thing I'd ask you is that I see that people making a quarter of a million dollars in this province are going to get a \$400-million tax break. Everybody making a quarter of a million dollars, the province has decided we can afford to give them \$400 million at the same time as you plan to cut, I gather — you've already indicated — cut the hospital funding, cuts to school board funding. How is it that we can afford a \$400-million tax break to people making \$250,000 a year?

Hon Mr Eves: Mr Phillips, as you know, with the chart I provided to you a week ago in the House — and I would like to know what your definition of rich Ontarian is, because —

Mr Phillips: It's \$250,000.

Hon Mr Eves: That's a rich Ontarian.

Mr Phillips: That's pretty good.

Hon Mr Eves: That's fine. Then what you're telling me is that the overwhelming majority of the tax break we are giving through our income tax reduction in the province of Ontario is going to 99.5% of the people, and the people that you describe as wealthy Ontarians are 0.5% of that population. You will also know that for people who make \$74,600 a year and less in the province, 73.4% of the total dollar tax reduction is going to those people. I don't think anybody would describe somebody making those sums of money and less as wealthy Ontarians.

The reality of the matter and the fact of the matter is that the overwhelming majority of the tax cut is going to

average- and moderate-income Ontarians, and that, sir, is precisely why we designed the tax reduction the way we did, so that somebody at the bottom end of the economic scale who pays tax gets a 41.4% tax reduction and somebody at the upper end of the scale who makes a significant amount of money — you describe it as \$250,000 a year — gets a 17.9% tax reduction.

Mr Phillips: Four hundred million dollars.

Hon Mr Eves: It's a progressive way of giving a larger percentage to those at the more modest end of the income scale. We felt that was the appropriate thing to do so that people making less money got more of a tax reduction.

The Chair: We'll move to the third party.

Mr Howard Hampton (Rainy River): To the Minister of Finance, we see what you're trying to accomplish here today. Everyone in Ontario knows that you have to cut a further \$3 billion in order to finance your tax scheme, and we also know that the lion's share of that \$3 billion is going to come from education, from health, from colleges, universities and municipalities.

It's clear from reading your document that you are going to try to list these cuts over the Christmas period, that you're going to try to pass these cuts off over the Christmas period and hope that no one notices them. For example, on page 11, you say that after December 15 "the Minister of Education and Training will announce funding levels for colleges and universities." You say on page 10, with respect to schools, that the Minister of Education "will be making a comprehensive announcement on restructuring and funding in the school system."

It's pretty clear what you're trying to do here. The one issue that everyone in Ontario is worrying about — how much are you going to take from education? how much are you going to take from municipalities? how much from health? how much from colleges? how much from universities? — you are trying to duck here today.

We also know that \$3 billion in cuts will mean the loss of tens of thousands of jobs. We know that. We know, for example, with the announcement the other day from the Ministry of Transportation that 700 people are out the door, and we know that the magnitude of cuts here will mean the loss of tens of thousands of jobs.

This is nothing more than a shallow finesse effort. You've come here with information that anybody could read out of the Globe and Mail business report and you've tried to pass that off as some sort of economic statement. You're trying to hold off, you're trying to disguise which communities, which parts of education, are going to be hurt when the cuts are announced over the Christmas period.

I've got some questions for you, and I hope you can deny these. It's our information that your government is going to cut a further \$800 million from education. That's the information we have. It is, further, our information that you intend to push off on to municipalities, on to the municipal property tax base, responsibilities for ambulance services, \$36 million; community health centres, \$103 million a year; public health units, \$192 million a year; the assistive devices program, \$141 million a year. These are all growth areas of health care and you intend to push them on to the municipal tax

base. Minister, do you categorically deny that your government is planning to download those services and those costs on the municipalities?

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Hon Mr Eves: To deal with the several issues raised by Mr Hampton in his question, first of all on health care funding: This government made a commitment in May 1994, long before even the last election campaign started, that health care funding would not be reduced below \$17.4 billion. We have not only lived up to that commitment, but we have allocated \$17.7 billion in this fiscal year for health care funding. We will continue to live up to that commitment. It is a total fallacy, that I know you might like to project across the province, that health care funding is being cut. It is not; in fact, we have increased it some \$300 million this year. That is a fact.

With respect to municipalities: They know what their transfer funding will be for the next fiscal year, 1997-98. I announced it on November 29, 1995. I gave them two years' notice. With respect to hospitals: They know what their funding will be for not only 1997-98 but 1998-99. I announced it on November 29, 1995. I realize this is something your government never did. They never gave them two and three years' notice with respect to transfers, but we have done that as a government.

I want to point out to you, as I pointed out to Mr Phillips, that the statement being made here today is an update, an in-year fiscal economic outlook that every Treasurer and every Finance minister in this province has delivered for decades upon decades, and it's taking exactly the same format. I see Mr Phillips shaking his head, but that is in fact the case.

Mr Phillips: Isn't what you promised.

Hon Mr Eves: I can give you the dates they were all made, the precise dates.

Mr Phillips: But that's not what you said you'd do.

Hon Mr Eves: And I can tell you that nine times out of 12, transfer payments were not included between 1984 and now. Mr Laughren, in 1993, for example, gave an economic outlook statement in late November, much the same as I did today, and he didn't get around to announcing transfer payments until March 23, about eight days before the next fiscal year started. You can rest assured, Mr Hampton, that we won't do to our transfer partners what Mr Laughren did on March 23, 1994. We have given municipalities and hospitals two- and three-year lead times.

Mr Hampton: Chair, my question's not being answered here. I put a specific question to the minister. I think we're due an answer. I put a specific question to you. Are you denying that you're going to cut \$800 million from education? Are you going to categorically deny that health care programs like ambulance services, community health centres, public health units, the assistive devices programs — are you going to categorically deny that you are strategizing to put the cost for those programs and the administration for those programs on to the municipal tax base? Are you going to categorically deny that?

Hon Mr Eves: I'm going to sit here and look you right in the eye and tell you none of those decisions have been made, absolutely none. How could we possibly

make those decisions until we have Crombie's report in? How could we possibly make those decisions until we have Mr Smith's report in? By the way, David Smith, the former president of Queen's University, requested the date of December 15. I'm sure he didn't request, unless you're questioning his integrity, that it be produced then so it could happen over the Christmas season.

Mr Hampton: No one is questioning anyone's integrity. I'm simply saying to you that the \$64-million question in Ontario is where are the \$3 billion in cuts going to come from? You came here today and you gave absolutely no answer to that. You're not telling us where the cuts are going to come from. You're not telling us where the thousands upon thousands of job losses are going to occur.

I put it to you that your government is looking now at removing another \$800 million from education, and I put it to you that your government is actively considering putting the responsibility for public health units, community health centres, ambulance services, the assistive devices program — all these are growth areas of health care; they're very important areas of health care. I put it to you that your government is considering putting responsibility for those things on to the municipal tax base. I'm asking you, are you categorically denying that your government is considering those strategies?

Hon Mr Eves: Mr Hampton, our government is going to consider whatever Mr Crombie reports to it early in December and we can't possibly make those decisions until we have Mr Crombie's report, which is exactly why transfer payments in the education sector, and in the college and university sector with respect to the Smith report, can't be made by now. But decisions with respect to municipalities and hospitals have been made; in fact, they were made a year ago.

Mr Pouliot: Mr Minister, it's sad to see an expert working his craft, in this case. By spending the same money, or slightly more, in terms of health you must factor in that the population of Ontario increases some 200,000 per annum. You must also factor in, as you are well aware, that the demographics are changing rapidly in terms of usage, so per capita you're actually spending less. You need not emanate from Harvard or U of T in math to understand that.

Common Sense Revolution: 725,000 jobs. From page 4 of your address, you're hoping for between 200,000 and 300,000, a shortage of close to 50%.

Common Sense Revolution: The balanced budget will occur in your first term of office. Your address states that you will balance the books by the end of fiscal year 2000-01. I'm not aware that, constitutionally, you're entitled to have a six-year term of office.

I want to draw your attention to page 7. With high respect, Mr Treasurer, on page 7 under "Ontario's Economy is Responding to our Plan," your current outlook is for "2.3% growth this year, increasing to 2.9% in 1997 and 3% in 1998." Your friends at the Dominion Bond Rating Service have taken figures from your ministry which are slightly higher, at 4.8% for 1998 but 4.4% in 1997, and what they've done, by shaving 1% —

The Chair: Your question?

Mr Pouliot: Yes, I'm coming to it, thank you. It's calculated that you would need an additional \$2.8 billion. Yet the discrepancy between the figures from your ministry quoted in the ROB by Dominion Rating and your statement delivered here today shaves by 1.5%. My own quick calculation means that, aside from the \$3 billion that you're looking for now, you will be required to look for an additional \$3.1 billion to \$3.2 billion if their figures are right and if your figures are right, because of the discrepancy of 1.8% in 1998 and a discrepancy of 1.5%. Dominion Rating has taken as a threshold, as a common denominator, 1%. How are you going to find the \$3 billion supplementary to this \$3 billion? Your plan is in the tank, Minister, unless you revise the tax cut.

Hon Mr Eves: Mr Pouliot outlined several questions in the course of his remarks. I would like to address them all.

First of all, with respect to the job creation numbers, he would note if he reads the text that what we've said in the text is that these are cautious projections over the next two years — not over five years of our mandate; over the next two years — cautious projections that the province of Ontario's economy will create 200,000 to 300,000 jobs in addition to the 137,000 already created. If he would care to work out that math, I think he will find that if the economy continues to perform under those circumstances for a five-year term, indeed it will come to 725,000 or in excess of 725,000.

We've also gone on to say in the same text, in the very next paragraph, that if the economy performs better than our projections, and we have every anticipation that it will, as it indeed has done this year, those job numbers will go up and we will exceed those job numbers.

With respect to the date for balancing the budget, the former minister will know that his government indicated that they could balance the budget of the province of Ontario in three years' time. The Liberal Party, during the course of the provincial election, indicated they could balance the budget in four years' time, and we indicated that we could balance the budget in five years' time, and we have always said in the fifth fiscal year after our election. Those numbers are what we are aiming at. We believe we can reach a balanced budget in the province of Ontario by the fiscal year 2000-01.

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With respect to the DBRS numbers, the DBRS numbers he's quoting are based on nominal growth of the GDP. The numbers we are using in our budget are a real growth in the GDP; that's why there's such a significant difference. However, I do take his point that DBRS does say that if the economy of the province was to underperform by 1% a year for four consecutive fiscal years, which I don't think is going to happen — it may well exceed our projections by 1% a year for four fiscal years — in their opinion, we would require an additional \$2.8 billion to meet our projections by the fiscal year 2000-01. On the other hand, what he doesn't say is that if the economy exceeds our projections by 1% a year for four consecutive years, we will have an additional \$2.8 billion, which means we'll either have a surplus in the province or we will balance our books one year earlier.

The Chair: We'll move to the government side.

Mr Ted Arnott (Wellington): Minister, notwithstanding the critical comments of the opposition members that we've heard so far, there is indeed a lot of good news in this document you've presented to this committee today, particularly the job growth numbers — 127,000 people who weren't working before June 1995 — and also, from my point of view, your continued progress against the deficit, so that by the year 2000-01 we won't be borrowing money; we can start paying down some of the debt.

I was hoping I could get your comments on payroll taxes, because we've seen in the late 1980s the introduction of the employer health tax and in the 1990s increased worker's compensation premiums that have inhibited job creation. What do you think the effect of your changes to payroll taxes will have on job creation in the future in Ontario?

Hon Mr Eves: Mr Arnott, we view the fiscal and economic plan we have as having several components. One is deregulation, of course, eliminating as many payroll taxes as we can in the province because, as you know, the Canadian Federation of Independent Business, which is comprised overwhelmingly of small businesses across Canada, and the Canadian Chamber of Commerce — any independent study done by those two independent bodies will show that payroll taxes are real job killers. There isn't any doubt about that.

As we've alluded to, just a few days ago my colleague the Minister of Labour announced a reduction of WCB premiums on average in the province of Ontario by some 5%. We are eliminating employer health tax to some 88% of small businesses — sorry, 88% of businesses, all businesses — across the province by 1999. This will mean that these employers will no longer have to pay this job-killing tax. We've combined it into our Fair Share health levy so that those making significant incomes, whom Mr Phillips was so interested in earlier today and so concerned about, will be paying the overwhelming lion's share of the Fair Share health levy. We thought that was a progressive way of ensuring that those people are doing that.

We are very concerned about payroll taxes. Recently there's been a debate among several provinces and the federal government about the level of employment insurance premiums. As we all know, CPP premiums will be rising by 25 cents this year, with or without reform of the CPP pension plan. We are concerned that while that is rising and will kill anywhere from 100,000 to 150,000 jobs in the country over a period of time, there is not significant movement the other way in terms of UI premiums, where the federal government and its employment insurance fund has built up a surplus of some \$5 billion to \$6 billion by the end of this year and will continue to amass a \$5-billion to \$6-billion surplus every year for the foreseeable future.

Nobody would argue with the fact that there should be a contingency fund, least of all us, who have a contingency fund of \$650 million allotted in this year's budget. But we do have to ask ourselves, is \$5 billion or \$6 billion not enough of a contingency fund, as opposed to allowing that number to grow to approximately \$20 billion by the end of 1999? We are very concerned about

that. We, as indeed the Canadian Federation of Independent Business and the chamber of commerce, feel that the federal government could make significant reductions in their UI or EI premiums and pass on those on, which in turn will create jobs across the country. We are somewhat concerned about that, as indeed other provinces are as well, and we've indicated that to the federal finance minister.

Mr Tim Hudak (Niagara South): Thank you to the minister for appearing before us today. Minister, as outlined in the budget and reinforced today in the economic statement, there are 10 separate tax cuts for people in Ontario: most important, finally, a cut in the personal income tax rates for hardworking Ontarians. What have the cut in the personal income tax, as well as the other nine tax cuts in Ontario, done for job creation?

Hon Mr Eves: We've already indicated the 127,000 jobs that have been created in the province's economy since the end of June 1995. As you know, the first instalment of our tax cut only took place on July 1, 1996, with the second instalment to come very shortly, on January 1, 1997. If you look at the consumer and business confidence as measured by the Conference Board of Canada, as measured by many independent bodies, I think you will see a significant increase in consumer and business confidence in the province of Ontario, and growing every day. I think we're on a very good upward trend in the province. There is no doubt that reduction of taxation has led to some of that confidence. You heard the numbers earlier about home sales and construction, especially construction of new homes. Those are very, very important statistics indeed, especially in a very important segment of our economy that had been going the other way for many years.

Mr Wayne Wetlaufer (Kitchener): Minister, the opposition likes to talk about underachievement; I like to talk about overachieving. I notice on page 2 you say, "We have overachieved our fiscal target for last year by almost \$600 million." Would you care to comment on the impact this has on foreign investor confidence, consumer confidence, business confidence in Ontario?

Hon Mr Eves: There is no doubt that not only in Ontario but indeed Canada-wide — Ontario's economy obviously is very important to the country of Canada as a whole. We are in effect, in terms of the manufacturing sector and export sector, the engine that drives the Canadian economy, so what's good news for Ontario, as Mr Martin has often said to me, is obviously good news for the country as a whole.

It's a combination of factors. You now have all governments in Canada proceeding along what I think is a very fiscally responsible method of getting their debt levels and their deficit levels down. Many provinces, of course, already have balanced budgets in terms of their annual deficit. We are not so fortunate. The province of Ontario and the province of Quebec and indeed the federal government itself, being significantly the three largest players as governments go, are the three last to start doing something about their serious economic problem.

Having said that, whenever I go to New York or London or any other place, Zurich, the amount of international confidence in the Canadian economy and in the

Ontario economy in particular is absolutely overwhelming. Many people ask how we have been able to do this, how we've been able to really turn the debt-GDP ratio around significantly in the province of Ontario and indeed in the country of Canada. This bodes very well, obviously, for the Canadian economy. You see that the value of the dollar is rising in international markets. We have low interest rates. Our interest rates, as I've already alluded to, are significantly lower than they have been for many, many decades, and I think that trend is going to continue. I know that Mr Martin and the federal government are very concerned about keeping interest rates low because they understand the impact it has on investor confidence and they understand the impact it has on international business confidence as well.

Mr Gerry Martiniuk (Cambridge): Thank you, Minister, for attending here today. As you know, Cambridge is bumping right along these days. As we speak, Toyota is busy constructing an increase in their plant which will mean 1,200 new jobs in 1997. Recently, I attended the opening of the only regional plaza, I understand, opening in Ontario or Canada for the year 1996. I noted from your statement, however, that foreign investment has increased rather dramatically this year over 1990-94. I was wondering if you could point to specific steps our government has taken that have led to this dramatic increase in foreign investment in Ontario.

Hon Mr Eves: I would say many of the same things to you that I just said to Mr Wetlaufer: the direction we're taking with respect to getting our fiscal house in order, not just in terms of paying down deficit and debt, but tax reduction, making Ontario's economy more competitive again so we can compete not only with our neighbours in Canada and just south of us in the United States but internationally as well. I don't know if people appreciate how important that is.

Reducing red tape and regulation: As you know, we have several committees of our caucus colleagues who are out across the province coming back to us with suggestions for reductions of red tape and agencies, boards and commissions in the province. I find that small business people get very frustrated by the amount of red tape and documentation we require them to fill out and comply with just to do business. They've become increasingly frustrated. We're trying to take a lot of that away so they have an opportunity to do what they do best, because they are the real job creators in any economy, not just in Ontario. Without the small business sector and the small business community, I'd hate to think of where the province of Ontario's economy would be or the country of Canada's, for that matter.

We are trying to do things like reducing payroll tax burdens, reducing regulation and red tape, and I alluded to the 10 tax cuts we made in our budget last May, and we are going to continue down that road until we become not only competitive within North America but competitive internationally as well. I can tell you that's being very well received by international investors.

The Chair: Thank you very much, Mr Minister. We appreciate your attending our committee meeting and for your report today.

Hon Mr Eves: Thank you. I would just like to say at the end of these deliberations, Mr Chair, that I certainly meant what I said, that I'd be pleased to return to the committee when my cabinet colleagues are able to see their way clear to make their announcements with respect to their various sectors in the Ontario economy as well.

The Chair: I made a note of that and we will be calling you. Thank you very much.

Mr Phillips: Try to persuade your members to let you come.

The Chair: There being no further business to bring before the committee, we stand adjourned.

The committee adjourned at 1642.

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Hon Ernie L. Eves, Minister of Finance

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 *Mr Gilles Pouliot (Lake Nipigon / Lac-Nipigon ND)
 Mr Joseph Spina (Brampton North / -Nord PC)
 *Mr Wayne Wettlaufer (Kitchener PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Tony Clement (Brampton South / -Sud PC) for Mr Spina
Mr Howard Hampton (Rainy River ND) for Mr Martin

Clerk / Greffier: Mr Franco Carrozza
Staff / Personnel: Ms Alison Drummond, research officer, Legislative Research Service

